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Civilian Personnel

DISCIPLINE AND ADVERSE ACTIONS

This regulation establishes Air Force policy and principles for maintaining discipline and for taking disciplinary and adverse actions. It implements the requirements of 5 U.S.C. Chapter 75, 5 C.F.R., Part 752, and DOD Directive 1400.14, Personnel Actions Affecting Key Personnel. It applies to employees, supervisors, civilian personnel officers, and other management officials of the Air Force.

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## Section A—General Information

### 1. Air Force Policy:

a. Commanders must maintain a constructive, disciplined work environment in which both management and employees recognize and carry out their responsibilities.

b. Necessary disciplinary action or adverse action is taken without regard to marital status, political affiliation except as required by law, race, color, religion, sex, national origin, or age. Adverse action based on an employee's physical or mental handicap is not taken when the employee can effectively perform assigned duties.

c. Disciplinary action or adverse action is taken only when necessary and then promptly and equitably. The purpose of disciplinary action is to correct and rehabilitate the offender, if possible. Penalties must not be disproportionate to offenses and are applied as consistently as possible considering the particular circumstances of the cause(s) for disciplinary action.

d. Disciplinary actions and adverse actions are personal matters and are carried out in private (see paragraph 29).

2. **Terms Explained.** The following terms are included for general guidance. The terms overlap, and more than one may apply to an action. Regulatory definitions, where applicable, and further explanation of these terms are provided by the central civilian personnel office (CCPO) upon request.

a. **Adverse Action.** A removal, suspension, furlough for 30 days or less, or reduction in grade or pay. Actions resulting from reduction in force are not included. Adverse actions may or may not be for disciplinary reasons (see paragraph 10).

b. **Bargaining Unit Employee.** An employee included in an appropriate bargaining unit for which a labor organization has been granted exclusive recognition.

c. **Cause of Action.** A recognizable offense against the employee-employer relationship such as a violation of rule, regulation or procedure; employment-related off-duty misconduct; failure to fulfill an employment-related agreement; or a mandatory requirement to take an action personal to an employee. It is disciplinary if it results from delinquency or misconduct by the employee. (A disciplinary cause of action is also called an *offense*.) It is nondisciplinary if it results from the employee's disability, the employee's declination of functional transfer, or a management determination such as reclassification of the employee's position or termination of an extended temporary promotion. A cause of action cannot support a disciplinary or adverse action unless it is included in appropriate notices (see r below).

d. **Charge.** Sometimes used to refer to the reason stated in notices of proposed action and of final decision when the reason is disciplinary.

e. **Counseling.** A nondisciplinary method to provide

information, instruction, guidance, advice, assistance, or encouragement. It is not to be confused with the oral admonishment which is disciplinary.

f. **Days.** Days means consecutive calendar days, including holidays, weekends, and other nonduty days.

g. **Disciplinary Action.** An action taken by management to correct an employee's delinquency or misconduct. Included are oral admonishments, reprimands, suspensions, removals and, in some cases, reductions in grade or pay. Some disciplinary actions are also adverse actions.

h. **Furlough.** A nondisciplinary action placing an employee in a temporary nonduty and nonpay status because of lack of work or funds or for other nondisciplinary reasons. A furlough is an adverse action if it is for a period of 30 calendar days or less and is based on a decision of an administrative officer (see paragraph 16). A furlough for more than 30 calendar days is a reduction-in-force action covered by FPM Chapter 351 and AFR 40-351, Reduction in Force, Transfer of Function and Out-Placement Assistance.

i. **Grade.** A level of classification under a position classification system.

j. **Harmful Error.** An error by management in the application of its procedures which, if corrected or alleviated, might have resulted in a different conclusion.

k. **Nexus.** A reasonable connection or factual relationship between the reason(s) for the action taken and the efficiency of the service.

l. **Nondisciplinary Adverse Action.** An adverse action that is taken for reason(s) other than to correct an employee's delinquency or misconduct.

m. **Offense.** A cause of action which is due to delinquency or misconduct by an employee (see paragraph c).

n. **Oral Admonishment.** A disciplinary discussion between a management official who has authority to take disciplinary action and an employee subject to that authority *in which the employee is informed that he or she has been disciplined by receipt of an oral admonishment*. It is a disciplinary action which is not an adverse action (see paragraph 13).

o. **Pay.** The rate of basic pay fixed by law or administrative action for the position held by an employee.

p. **Preponderance of the Evidence.** That degree of relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

q. **Prior Offense.** A prior cause of action for which a disciplinary penalty has been imposed (see paragraph 39).

r. **Reason.** Includes the current cause of action and facts, circumstances, and considerations relied on to support the action (for example, prior offenses).

s. **Removal.** An involuntary separation of an employee from Air Force employment. It terminates

the employee's status as an Air Force employee and, in some cases, may bar the individual from future federal employment. The term removal is sometimes used in this publication in a general sense to refer to any separation action, disciplinary or nondisciplinary, covered by FPM Chapter 752, Subchapter 3. At other times, it is used to describe a specific disciplinary action which also is an adverse action. See paragraph 16.

**t. Reprimand.** A formal disciplinary letter issued to an employee by a management official who has authority to discipline the employee. It is a disciplinary action which is not an adverse action (see paragraph 14).

**u. Suspension.** An action which places an employee for disciplinary reasons in a temporary status without duties and pay. It is a disciplinary action and an adverse action (see paragraph 15).

### **3. Employees and Actions Covered By This Regulation and Specific Exclusions:**

**a. Employees Covered and Those Excluded.** This document applies to employees of the Air Force serving in the competitive or excepted service. Exclusions are:

(1) Employees whose appointment is made by and with the advice and consent of the Senate (statutorily authorized positions).

(2) Presidential appointees, Senior Executive Service employees, administrative law judges, and National Guard technicians.

(3) Non-US citizens employed in foreign areas who are not entitled to veteran's preference based on service with the US Uniformed Services. Policies and procedures covering those employees are established by servicing commands.

(4) Employees of Nonappropriated Fund Instrumentalities.

**b. Actions Covered and Those Excluded.** This regulation applies if management begins disciplinary or adverse personnel actions that affect covered employees. See attachment 1 for further clarification. Exclusions are:

(1) The removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less of an employee serving in an excepted service, Schedule C position.

(2) A separation action against an air traffic controller covered by 5 U.S.C. 2109 and under procedural requirements of sections 3382 or 8335(a).

(3) Separations of Section 6 Dependent School personnel (Section 6 of Public Law 81-874, 64 Stat. 1107, as amended) not selected for the following school year (see AF Supplement to FPM Chapter 302).

(4) Certain actions relating to employees in probationary or trial periods or in the first year of current continuous service in the same or similar positions (see paragraph 4), to employees serving under excepted appointments, to reemployed annuitants, to student trainees, and to status quo employees (see attachment 1).

(5) Actions resulting from national security

determinations under 5 U.S.C. 7532 (see AFR 40-732, Security Program).

(6) Reduction in force action under 5 U.S.C. 3502 (see AFR 40-351).

(7) Reduction in grade of a supervisor or manager who has not satisfactorily completed the probationary period under 5 U.S.C. 3321(a)(2) if such reduction is to a grade and pay no lower than that held immediately before becoming such a supervisor or manager (see AFR 40-452, Performance Appraisal Program).

(8) Reduction in grade or removal based solely on unacceptable performance under 5 U.S.C. 4303 (see AFR 40-452).

(9) Action initiated under authority of the Special Counsel of the Merit Systems Protection Board (MSPB) under 5 U.S.C. 1206.

(10) Action which entitles an employee to grade retention under 5 C.F.R., Part 536, and an action to terminate the entitlement.

(11) Voluntary action initiated by the employee (see paragraph 11).

(12) Action taken or directed by the Office of Personnel Management (OPM) under 5 C.F.R., Part 731 (Suitability) or Part 754 (Adverse Actions).

(13) Involuntary retirement because of disability under 5 C.F.R., Part 831.

(14) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made.

(15) Action which terminates a temporary promotion within a maximum period of 2 years and returns the employee to the position from which temporarily promoted, or reassigns or demotes the employee to a different position not at a lower grade or level than the position from which temporarily promoted.

(16) Cancellation of a promotion to a position not classified before the promotion.

(17) Placement of an employee serving on an intermittent, part-time, or seasonal basis in a nonduty, nonpay status in accordance with conditions established at the time of appointment.

(18) Reduction of an employee's rate of pay from a rate which is contrary to law or regulation to a rate which is required or permitted by law or regulation.

(19) Action which terminates a term promotion at the completion of the project or specified period or at the end of a rotational assignment in excess of 2 years but not more than 5 years, and returns the employee to the position from which promoted or to a position of equivalent grade and pay.

(20) Action taken under provisions of statute, other than one codified in title 5, U.S.C., which excepts the action from 5 U.S.C., Chapter 75, Subchapters I and II.

### **4. Employees in Probationary or Trial Period, or in First Year of Current Continuous Service in the Same or Similar Positions:**

a. If oral admonishments, reprimands, or suspensions are considered appropriate, the requirements of this publication apply. Oral admonishments and reprimands may be used under the same conditions and in the same manner as for other employees. If the offense warrants a penalty more severe than a reprimand, management normally will terminate the employee's appointment, using procedures applicable to the type of appointment. However, at the sole discretion of management, a suspension not to exceed 5 days may be imposed rather than termination, if management considers a suspension of such duration as sufficient to rehabilitate the employee.

b. Policies, requirements, and procedures for actions when probationers fail to exhibit fitness for continued employment are explained in AFR 40-452.

### **5. Responsibilities for Discipline and Adverse Actions:**

a. **Air Force Civilian Appellate Review Agency (AFCARA).** The AFCARA processes certain grievances, appeals, and discrimination complaints on behalf of the Secretary of the Air Force.

b. **Headquarters USAF, Directorate of Civilian Personnel (HQ USAF/MPK).** The Directorate of Civilian Personnel sets policies and procedures for discipline and adverse actions for Air Force civilian employees.

c. **The Office of Civilian Personnel Operations.** The Office of Civilian Personnel Operations provides operational guidance, advice, and assistance concerning discipline and adverse actions.

d. **Major Commands (MAJCOM) and Comparable Organizations.** MAJCOMs and comparable organizations to which a directorate of civilian personnel or CCPO is assigned provide supplemental disciplinary and adverse action policies for all serviced employees when required, ensure completion of necessary program training, and advise and assist applicable field activities.

e. **Commanders (See AFR 40-102, Basic Authority and Responsibility for Civilian Personnel Administration and Management):**

(1) Ensure that rules, regulations, and other standards of conduct are made known to all employees under their jurisdiction.

(2) Administer fair, impartial, consistent, and regulatorily correct disciplinary and adverse action programs within their activity.

f. **Civilian Personnel Officers (CPO):**

(1) Assist commanders, managers, and supervisors to ensure that all requirements are met for disciplinary and adverse actions.

(2) Take actions directed by the OPM, the MSPB, or higher levels of authority in the Air Force; or which otherwise are outside a supervisor's normal personnel management responsibilities.

(3) Ensure that disciplinary actions and adverse actions are consistent with law, regulation, and policy.

(4) Ensure that disciplinary actions and adverse actions are processed according to AFM 30-130, volume IV, Base Level Personnel System Civilian Personnel.

g. **Supervisors:**

(1) Maintain an environment which promotes good employee-management relations. Supervisors should be aware of the cultural and religious diversities of their employees and create a work environment free from discrimination because of race, color, religion, sex, national origin, age, or physical or mental handicap (see AFR 40-306, Selective Placement Programs; AFR 40-701, Employee-Management Policy; and AFR 40-713, Equal Employment Opportunity (EEO) Program).

(2) Keep employees informed of rules, regulations, and standards of conduct, and maintain conduct and discipline according to policy and established procedure.

(3) Gather, analyze, and carefully consider available facts and circumstances before taking or recommending disciplinary action; and ensure that efforts are made to minimize the impact of nondisciplinary adverse actions.

(4) Constructively correct employees individually and in private (see paragraph 29).

(5) Make recommendations on actions; sign and issue notices of proposed and final action; receive and consider answers to proposed actions; and ensure that all approvals and coordinations of management officials, the CCPO, and other staff agencies required by regulation or policy are obtained before issuance of notices (see paragraphs 6 and 7).

(6) Be prepared to defend any disciplinary action or adverse action taken if the employee contests it.

h. **Employees.** Employees discharge their assigned duties conscientiously; respect the administrative authority of those directing their work; and observe laws, regulations, and policies governing their conduct. The Air Force does not interfere unnecessarily in the private lives of its employees. It does require that they be honest, reliable, trustworthy, and of good character, reputation, and unquestioned loyalty to the government and the Air Force (see AFR 40-735, Civilian Conduct and Responsibility, and AFP 40-11, Air Force Civilian Standards).

### **6. Delegation of Authority To Take Disciplinary and Adverse Actions:**

a. Supervisors are delegated this authority in AFR 40-102 or AFR 40-7, Nonappropriated Funds Personnel Management and Administration, as applicable.

b. The authorities in (1) and (2) below apply unless changed by authorized commanders. All changes must be in writing, and any different designations must be made to positions rather than to the incumbents:

(1) Supervisors are authorized to sign and issue notices, receive and consider employees' answers, and make recommendations and final decisions on actions

covered by this publication. Normally, first-level supervisors perform these functions, although higher level supervisors may perform any or all of them, as well.

(2) CPOs and their functional chiefs are authorized to sign and issue notices, receive and consider employees' answers, make recommendations and final decisions when applicable, and take actions directed by appropriate authorities outside the Air Force and higher levels of authority in the Air Force; required by management decision (for example, those resulting from reorganization, lack of funds, changes to lower grade based on classification determinations, and similar actions or in carrying out appointing authority functions); or resulting from unsuitability for employment when the determination is based on information in replies to employment inquiries or in investigation reports and is not directly related to current job performance.

c. Regardless of the authorities listed above, when an adverse action affects an employee in grades GS-16 through 18, or a Scientific and Technical position under 5 U.S.C. 3104, or a Schedule C position at GS-12 or above, it must be approved in advance under procedures available in the CCPO.

#### **7. Review and Coordination of Disciplinary and Adverse Actions:**

a. **CCPO Coordination.** The CCPO is the primary local source of authoritative information and interpretation of policy and procedures concerning civilian discipline and adverse actions and shares in management's responsibility to ensure that such actions comply with governing requirements. Accordingly, written notices of proposed action and notices of final decision for disciplinary and adverse actions will be coordinated with the CCPO before delivery to employees. The CCPO review before coordination covers both merit and procedures and is conducted by someone in a position of authority who is knowledgeable of the requirements of the civilian personnel system. Oral admonishments need not be coordinated with the CCPO, although it is recommended that the supervisor discuss the matter with a CCPO representative before deciding to issue an admonishment.

b. **Other Coordination.** Other offices in addition to the CCPO may be designated as points of coordination; staff members of these offices should be trained in disciplinary and adverse action policy and procedures. As a minimum, notices of final decision for adverse actions are coordinated with the office of the staff judge advocate before delivery to employees. The office of the staff judge advocate reviews these actions for legal sufficiency, including whether there appears to be sufficient evidence to support the actions. Coordination procedures must permit fulfillment of CCPO responsibilities under AFR 40-102; AFR 40-104, The Central Civilian Personnel Office; AFR 40-105, Civilian

Personnel Servicing Arrangements; and this document.

**8. Supplementing This Regulation.** See AFR 40-171, Civilian Personnel Publications. Clauses or provisions of a collective bargaining agreement dealing with disciplinary or adverse actions are not supplements to this regulation.

#### **Section B—Taking Actions Constructively**

**NOTE:** See attachment 2, also. This section gives general guidance to management for the constructive administration of disciplinary and adverse actions under this publication. This guidance does not establish mandatory procedures which may be subject to compliance review by a third party; rather, it is intended only as an aid to assist management in taking effective actions.

**9. Constructive Discipline.** Maintaining discipline usually is not a problem within a work environment where reasonable rules and standards of conduct and performance are clearly communicated and consistently enforced; where supervisors set a good example; where aspects of conduct and performance needing improvement are identified in a way that respects the employee's dignity; where employees are treated fairly and encouraged to improve; and where good performers are recognized.

a. **Principles of Constructive Discipline.** Constructive discipline is preventive in nature. Its objectives are to develop, correct and rehabilitate employees; to encourage their acceptance of appropriate responsibility; and to prevent, if possible, situations where there is no alternative but to penalize. When penalties are appropriate, they are applied as consistently as possible considering the particular circumstances of the cause(s) for disciplinary action. Additional information concerning selection of penalties is in section F, attachments 3, and 4.

b. **Achievement of Constructive Discipline.** Even in the best of organizations, disciplinary action as explained in Section C may become necessary. When considering and taking disciplinary action, management:

(1) Inquires into the apparent offense and ensures appropriate consideration of all available relevant information.

(2) Ensures that action taken is for good cause; consistent with applicable law, regulation and policy; fair; and timely.

(3) Ensures that disciplinary action is accomplished in a manner that best contributes to the objective of constructive discipline in a above.

(4) Conducts interviews and inquiries and accomplishes disciplinary actions in private to minimize embarrassment to the employee. The minimum number of people necessary (consistent with the need for fact gathering, internal coordination, and observance of the

employee's right to representation) are involved in or made aware of the action. Information about such actions may not be routinely made available to those outside of management and not affected by the action without consent of the employee involved. Paragraph 29 contains guidance concerning the employee's right to representation including, where applicable, the employee's right to union representation when an interview or inquiry is investigatory in nature.

(5) Must not request that the employee resign or retire to avoid discipline (see paragraph 11).

**10. Distinguishing Disciplinary From Nondisciplinary Situations.** Management's identification of the cause(s) for action is particularly important where the situation might be either disciplinary or nondisciplinary, since an improper identification may lead to a failure to meet all requirements. Additional discussion of specific disciplinary and nondisciplinary situations is in attachment 5. The two situations are:

**a. Disciplinary Situations.** Disciplinary causes for action are causes due to delinquency or misconduct personally attributable to the employee.

**b. Nondisciplinary Situations.** There are other causes of action which are not due to an employee's delinquency or misconduct but which are personal to the employee. These, too, can result in adverse action. Examples are furlough or either change to lower grade or separation because of physical incapacity. In most nondisciplinary adverse actions, there are special merit and procedural requirements contained in specific subject matter regulations. These actions must comply with the requirements of all applicable provisions. When processing nondisciplinary actions, management:

(1) Ensures that it is clear the action is nondisciplinary and that the action documents do not convey delinquency or misconduct.

(2) Minimizes impact on the employee to the extent possible. While the action is in process, efforts are continued to locate other suitable assignments that will reduce the employee's financial loss and career disruption.

**11. Voluntary Separations and Reductions.** Separations and reductions in grade or pay voluntarily initiated by employees are by their nature not actions requiring the use of adverse action procedures. However, a resignation, optional retirement, or reduction in grade or pay at an employee's request is involuntary and an adverse action if it is obtained by coercion, duress, time pressure, intimidation, or deception. Whether an action is voluntary or involuntary is determined not by the form of the action but by the circumstances that produced it.

**a.** An action requested by an employee is voluntary only if the employee has freedom of choice. The general principle is that an action is voluntary if the employee is free to choose, understands the transaction,

is given a reasonable time to make a choice, and is permitted to set the effective date. Management may point out the desirability of another effective date, but may not arbitrarily set an earlier or a later date and have the action remain voluntary.

**b.** An employee who is confronted by management with a potential disciplinary or adverse action may choose to voluntarily accept a reduction in grade or pay, resign, or retire in lieu of disciplinary or adverse action. It is permissible for management to discuss the possible alternatives with the employee. It is *not* appropriate to advise or request that the employee resign or retire. Neither is it appropriate to say that the employee *must* resign or retire or that action will be proposed. The fact that the employee may be faced with an inherently unpleasant situation, or that possible choices may be limited to two unpleasant alternatives, does not make the resulting action involuntary.

**c.** Neither should resignation be encouraged when there is substantial medical and other evidence about an employee's mental condition which casts doubts that the employee understands the voluntary alternatives involved. If management desires to separate the employee, it may initiate action to do so by disability retirement or by adverse action procedures, as appropriate.

## **Section C—Disciplinary and Adverse Actions and Their Requirements**

**12. Governing Requirements.** Disciplinary actions and adverse actions are governed by provisions which permit essential management decisions while preserving employee rights established by law, regulation, policy, or collective bargaining agreement. These actions are effected through a series of steps including notice of proposed action, opportunity to answer, notice of final decision, and access to appellate or grievance procedures. Actions are accomplished through written documents which must meet specified criteria except for oral admonishments discussed in paragraph 13 and, where applicable, oral notices of proposed reprimand discussed in paragraph 14(d)(2). Actions covered by this regulation must comply with all applicable provisions of law; OPM, Department of Defense and Air Force directives; issuances of lower echelons within the Air Force, and collective bargaining agreements under title 5, U.S.C., Chapter 71.

### **a. Standard for Taking Disciplinary and Adverse Actions:**

(1) Management may take a disciplinary or adverse action only for such cause as will promote the efficiency of the service.

(2) Management may not take an action which would result in a personnel practice prohibited by 5 U.S.C. 2302. See attachment 2 for a summary of those prohibited personnel practices.

**b. Burden of Proof:**

(1) Management must be prepared to support the following by a *preponderance of the evidence*:

(a) The reason(s) for the action taken (for example, that the alleged misconduct actually occurred).

(b) That disciplinary or adverse action logically can be expected to promote the efficiency of the service.

(2) Management must also be prepared to support the appropriateness of the particular penalty imposed (see paragraph 34).

(3) Harmful Error. If harmful error is alleged in an appeal or grievance, the burden is upon the appellant or grievant to show that—based upon the record as a whole—the error was harmful (caused substantial harm or prejudice to the appellant's or grievant's rights). Accordingly, if the appellant or grievant has *not* alleged a procedural error to be harmful, that error normally should be assumed to be *not* harmful.

**c. Application of Requirements.** The provisions for disciplinary or adverse actions are applied with judgment to ensure compliance with both their intent and their letter. Actions which do not comply with governing requirements may be defective either procedurally or on merit, or both. A defect could result in reversal of the action or in a reduction in the severity of the action. An action that is reversed because of harmful error in procedures may be reinstituted, if it is possible to correct the deficiency. Action may not be reinstituted if a merit determination results in modification of that action or reversal.

**13. Oral Admonishment:**

**a. Purpose and Use.** See paragraph 2n. The oral admonishment is used to correct misconduct or delinquency or to motivate employees to improve their work habits, work methods, or behavior. Because of its adaptability to a variety of situations, the oral admonishment is often adequate to effect the required correction or improvement, particularly when the employee has no previous history of violations.

(1) The oral admonishment has neither procedural requirements nor prescribed format. The process is oral except for the temporary recording of the admonishment on the employee's AF Form 971, Supervisors' Record of Employee.

(2) The effective date of an oral admonishment is the date the employee is notified of the decision to admonish. Notation of the oral admonishment must be entered on the employee's AF Form 971 when imposed and must be deleted 2 years from the effective date of the admonishment.

**b. Relationship To Other Disciplinary Actions.** An oral admonishment is informal and the least severe penalty in the Air Force discipline program. It is a disciplinary action which is not an adverse action. See paragraph 39c for an explanation of the use of oral admonishments in relation to attachment 3.

**c. Difference From Performance Evaluations and Counseling.** A performance evaluation discussion or a counseling session is nondisciplinary. It is not intended to penalize or to discipline the employee but, rather, is used to provide guidance, encouragement, or instruction (see AFR 40-452). An oral admonishment is clearly a disciplinary action used to motivate an employee to improve; it necessarily includes a discussion of the conduct that needs improvement or of the delinquency that needs correction.

**d. Steps In Considering and Taking an Oral Admonishment.** If there is apparent misconduct or delinquency for which an oral admonishment would be an appropriate disciplinary action, it is suggested that the supervisor follow the steps shown below unless a governing collective bargaining agreement provides otherwise. These steps are not mandatory; rather they are given as a general guide to help the supervisor ensure that relevant facts are surfaced and considered and that appropriate action is effectively taken. *Any required actions in this paragraph are specifically stated as such.* While it is recommended that the steps below be taken as promptly and efficiently as possible, they need not be completed in one session. *Supervisors are required to observe employee representation entitlements according to paragraph 29 at all appropriate steps.* It is suggested that the supervisor:

(1) Gather available facts.

(2) Interview the employee in private; tell the employee the purpose of the interview; state the problem and the facts in a way that the employee can understand. *Supervisors are required to observe bargaining unit employees' entitlement to representation according to paragraph 29a where an interview or inquiry is investigatory in nature.*

(3) Give the employee an opportunity to answer and to express his or her views about the circumstances of the matter. If the employee requests time for thought before answering, the request should be honored, if possible.

(4) Consider the employee's answer and any explanations offered. If the employee raises questions which the supervisor must resolve before making a decision or if the supervisor needs time to consider the employee's answer, additional time should be taken. In such cases, advise the employees that a decision on the matter will be made as promptly as possible and that the employee will be advised of the decision.

(5) Determine what action is appropriate:

(a) If the discussion satisfactorily resolves the matter, tell the employee. No further action is necessary.

(b) If the discussion does not satisfactorily resolve the matter and the supervisor decides that an oral admonishment is warranted, tell the employee and explain why. Make it clear to the employee that he or she is being disciplined by receipt of an oral



admonishment. Identify areas where improvement is needed, suggest methods for improving, and offer suitable assistance and guidance.

NOTE: It is recommended that the supervisor discuss the matter with a CCPO representative before deciding to issue an admonishment.

(6) Make a notation on the AF Form 971, which should include the words "oral admonishment" to distinguish it from nondisciplinary counseling, a brief description of the occurrence requiring oral admonishment, the effective date, and a notation that the employee has been advised of the admonishment. The employee may be asked to initial the AF Form 971 entry. The employee's initials do not indicate agreement with the entry content, but only awareness of the entry. *Note the requirements for recording and deleting references to oral admonishments according to paragraph a(2).*

(7) Followup on the matter and offer assistance, suggestions, and encouragement, as appropriate. Note the AF Form 971 accordingly. Include entries to reflect improvement in the matter, if applicable, and tell the employee of the improvement noted.

NOTE: See figure 1.

#### 14. Reprimand:

a. **Purpose and Use.** See paragraph 2t. A reprimand is used to correct significant misconduct or delinquency and repeated lesser offenses. It is a severe disciplinary action that should be adequate for many disciplinary situations which require an action more severe than an oral admonishment. It should be clearly identified with the subject: "Notice of Reprimand."

(1) The "Notice of Reprimand" is temporarily filed in the employee's Standard Form 66, Official Personnel Folder, for 2 years from the date of the reprimand and is destroyed when the 2 years expires. A notation is also made on the AF Form 971 when the reprimand is issued and is deleted when the reprimand expires.

(2) In the establishment of a progression of penalties (see paragraph 36), a reprimand may be made more "severe" by including (a) references to previous offenses; (b) indication of the seriousness of management's concern with the continued misconduct or delinquency; or (c) statements warning that a further offense "could" result in a more severe penalty. It is important to state such warning in terms of "could" rather than "will" result in a more severe penalty.

(3) It may be the last step in a progression of penalties before removal if it gives clear warning that a further offense could lead to removal.

#### b. Relationship To Other Disciplinary Actions:

(1) The reprimand is the least severe formal penalty. It is a disciplinary action which is not an adverse action. It has the same weight as a suspension when it is used as a prior offense penalty to support the penalty for a later offense.

(2) It can be made more severe for use in those

situations where Air Force policy precludes the use of suspension, in other circumstances where a suspension might be managerially unsound even though the offense is serious enough to warrant suspension, or where the offense does not warrant suspension (see a(2) above).

c. **Difference From Letters Stating Standards or Requirements.** Letters which document standards of performance and standards of conduct are not intended to be disciplinary and are not reprimands. Also, letters which establish special requirements (for example, letters which outline leave approval procedures or which warn employees of the potential consequences of certain delinquencies) are not reprimands. A reprimand is used to discipline an employee who is aware of management's expectations and who has failed to meet those expectations for reasons within the employee's control; it may restate requirements that the employee is expected to meet.

d. **Steps In Considering and Taking a Reprimand.** If there is apparent misconduct or delinquency for which a reprimand would be an appropriate disciplinary action, it is suggested that the supervisor follow the steps shown below, unless a governing collective bargaining agreement provides otherwise. See figure 1. These steps are not mandatory; rather, they are given as a general guide to help the supervisor ensure that relevant facts are surfaced and considered and that appropriate action is effectively taken. *Any required actions in this paragraph are specifically stated as such.* While it is recommended that the steps below be taken as promptly and efficiently as possible, they need not be completed in one session. *Supervisors are required to observe employee representation entitlements according to paragraph 29 at all appropriate steps.* It is suggested that the supervisor:

(1) Gather available facts.

(2) Interview the employee in private; tell the employee the purpose of the interview including that it is proposed to reprimand the employee and, if applicable, that this interview serves as an oral notice of proposed reprimand; state the problem and the facts in a way that the employee can understand. *Supervisors are required to observe bargaining unit employees' entitlement to representation according to paragraph 29a where an interview or inquiry is investigatory in nature.*

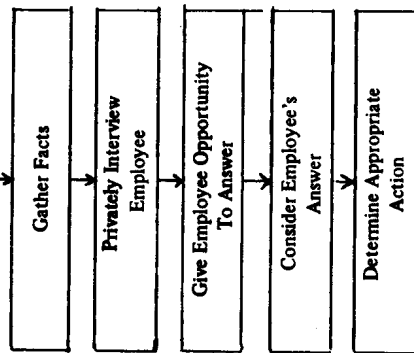
NOTE: Unless a governing collective bargaining agreement provides otherwise, it is required that the employee be given a notice of proposed reprimand which may be oral or written.

(3) Give the employee an opportunity to answer and to express his or her views about the circumstances of the matter. If the employee requests time for thought before answering, the request should be honored, if possible. *Where a notice of proposed reprimand is mandatory (see NOTE in (2) above), it is required that the employee be given an opportunity to answer. This opportunity to answer must comply with paragraph 30.*

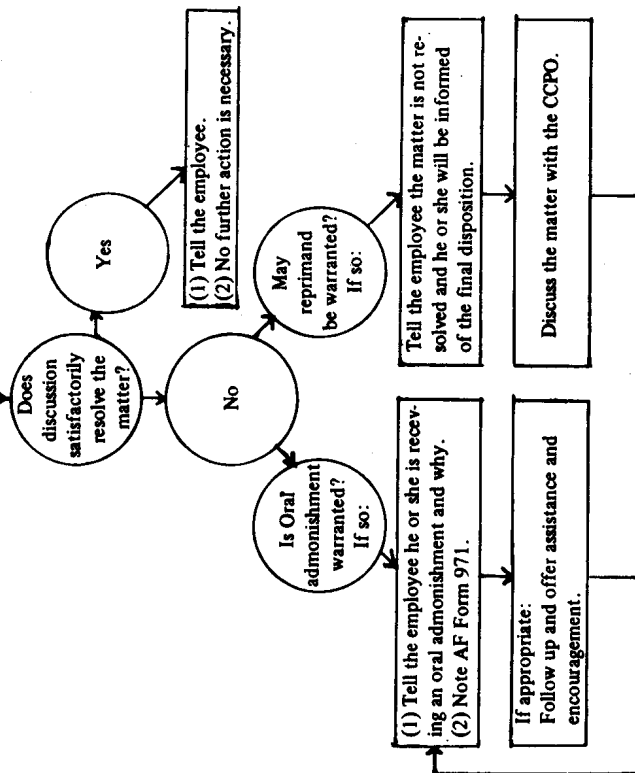
(4) Consider the employee's answer and any

It is suggested that the supervisor follow the steps shown below unless a governing collective bargaining agreement provides otherwise. These steps are not mandatory rather, they are given as a general guide to help the supervisor ensure that relevant facts are considered and that appropriate action is taken. *Any required actions are specifically stated as such.* While it is recommended that the steps below be taken as promptly and efficiently as possible, they need not be completed in one session. For additional information, see AFR 40-750, Discipline and Adverse Actions, paragraphs 13 and 14.

Supervisors are required to observe employee representation entitlements at all appropriate steps (AFR 40-750, paragraph 29).



1. Gather available facts.
2. Interview the employee in private; tell the employee the purpose of the interview including, for example, that a reprimand is proposed and, if applicable, that this interview serves as an oral notice of proposed reprimand or that an oral admonishment is being considered (should tell the employee the most severe action contemplated); state the problem and the facts in a way that the employee can understand (see notes 1 and 2).
3. Give the employee an opportunity to answer and to express his or her views about the circumstances of the matter. If the employee requests time for thought before answering, the request should be honored, if possible (see note 3).
4. Consider the employee's answer and any explanations offered (see note 4).
5. Determine what action is appropriate.
  - 5a. If the discussion resolves the matter, tell the employee. No further action is necessary.



#### Reprimand:

- 5c. If the discussion does not satisfactorily resolve the matter and a reprimand might be warranted:
  - (1) Tell the employee that the matter is not resolved and that he or she will be informed of the final decision in the near future.
  - (2) Discuss the matter with the CCPO.
  - (3) If an oral admonishment is adequate, follow the suggested steps for an oral admonishment.

- 5d. If it is decided to reprimand the employee, prepare a "Notice of Reprimand" and coordinate it with the CCPO before delivering it to the employee (see note 5).

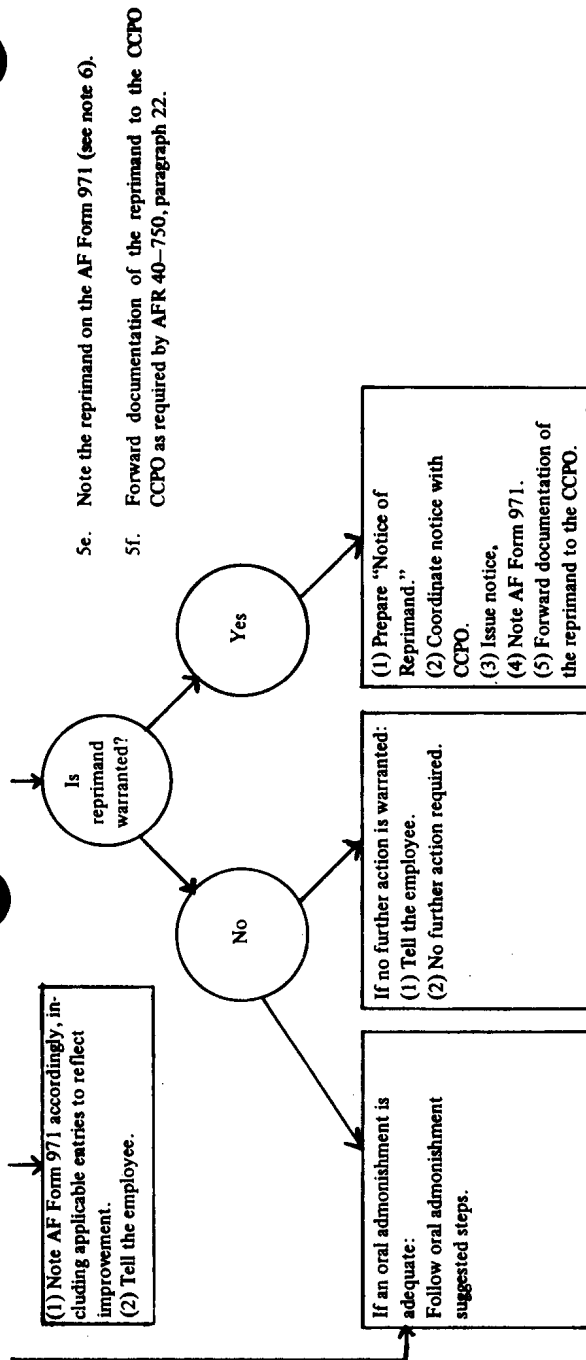
#### Oral Admonishment:

- 5b. If the discussion does not satisfactorily resolve the matter and an oral admonishment is warranted, tell the employee and explain why. Make it clear to the employee that he or she is being disciplined by receipt of an oral admonishment. Identify areas where improvement is needed, suggest methods for improving, and offer suitable assistance and guidance (see note 7).

6. Make a notation on AF Form 971 which should include the words "oral admonishment" to distinguish it from nondisciplinary counseling, a brief description of the occurrence requiring oral admonishment, the effective date, and a notation that the employee has been advised of the admonishment. The employee may be asked to initial the AF Form 971 entry. The employee's initials do not indicate agreement with the entry content, but only awareness of the entry (see note 8).

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## NOTES:

1. Unless a governing collective bargaining agreement provides otherwise, it is required that the employee be given a notice of proposed reprimand which may be oral or written.
2. Supervisors are required to observe bargaining unit employees' entitlement to representation according to paragraph 29a where an interview or inquiry is investigatory in nature.
3. Where a notice of proposed reprimand is mandatory, it is required that the employee be given an opportunity to answer. This opportunity to answer must comply with AFR 40-750, paragraph 30 (see note 1).
4. It is required that the employee's answer to a proposed reprimand be considered according to paragraph 31. If the employee raises questions which the supervisor must resolve before making a decision or if the supervisor needs time to consider the employee's answer, additional time should be taken. In such cases, advise the employee that a decision on the matter will be made as promptly as possible and that the employee will be advised of the decision.
5. A "Notice of Reprimand" is required. See AFR 40-750, paragraphs 19e and f, concerning the notice contents.
6. Unless a collective bargaining agreement provides otherwise, the requirements of AFR 40-750, paragraph 14a(1) apply to recording and deleting reprimands.
7. It is recommended that the supervisor discuss the matter with a CCPO representative before deciding to issue an oral admonishment.
8. Unless a collective bargaining agreement provides otherwise, the requirements of AFR 40-750, paragraph 13a(2) apply to recording and deleting references to oral admonishments.

Figure 1. Oral Admonishment or Reprimand.

explanations he or she may offer. *It is required that the employee's answer to a proposed reprimand be considered according to paragraph 31.* If the employee raises questions which the supervisor must resolve before making a decision or if the supervisor needs time to consider the employee's answer, additional time should be taken. In such cases, advise the employee that a decision on the matter will be made as promptly as possible and that the employee will be advised of the decision.

(5) Determine what action is appropriate:

(a) If the discussion satisfactorily resolves the matter, tell the employee. No further action is necessary.

(b) If the discussion does not satisfactorily resolve the matter and the supervisor decides that an oral admonishment is adequate penalty under the circumstances, take the steps outlined in paragraphs 13d(5)(b) through (7).

(c) If the discussion does not satisfactorily resolve the matter and the supervisor decides that a reprimand might be warranted, tell the employee that the matter is not resolved and that he or she will be informed of the final decision in the near future.

(d) If, after discussion with the CCPO, the supervisor decides to reprimand the employee, prepare a "Notice of Reprimand" and coordinate it with the CCPO before delivering it to the employee. *This notice is required. See paragraphs 19e and f concerning the notice contents.*

(e) Note the reprimand on the AF Form 971. *This notation is required according to paragraph a(1).*

(f) Send documentation of the action to the CCPO. *This is required according to paragraph 22.*

## 15. Suspension:

### a. Purpose and Use (see paragraph 2u):

(1) A suspension, regardless of its duration, is an adverse action. It is a severe disciplinary action. Ordinarily, it is the final step in the disciplinary process before removal action and is accompanied by a warning to the employee that a further violation of rules could result in removal. It is important to state such warning in terms of "could" rather than "will" result in removal.

(2) A suspension prevents an employee from performing work and denies salary for the suspension period. Therefore, a suspension may *not* be imposed for indebtedness or for performance-related factors in nondisciplinary situations (see paragraph 10).

(3) The period of a suspension is normally expressed in calendar days. Suspensions seldom should exceed 30 days unless the indefinite suspension provision of paragraph 16e(1) is used.

b. **Suspensions for 14 Days or Less.** An employee against whom a suspension for 14 days or less is proposed is entitled to:

(1) An advance written notice stating the specific reason(s) for the proposed action (see paragraph 18).

(2) A reasonable time to answer orally or in writing or both and to furnish affidavits and other documentary evidence in support of the answer. The employee normally is given not less than 7 days to answer and *must* be given not less than 24 hours.

(3) Representation by an attorney or other representative (see paragraph 29).

(4) A written decision and the specific reason(s) for the decision at the earliest practicable date (see paragraph 19).

c. **Suspensions for More Than 14 Days.** Those suspensions are discussed in paragraph 16.

**16. Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less.** See paragraph 17 for additional, special procedures when a reduction in grade is based on reclassification or job-grading determinations.

a. **Actions Included.** These actions include but are not limited to:

(1) Actions based solely on nonperformance related factors.

(2) Actions that involve both performance and nonperformance related factors.

(3) Actions not covered by AFR 40-452 that are based solely on performance-related factors.

b. **Removal.** See paragraph 2s. A disciplinary removal is the most severe disciplinary action. It is considered rehabilitative even though it severs the Air Force employee-employer relationship. Although it precludes improvement in the Air Force position from which removed, it should help the employee see the need for improvement in future employment. Before removal is initiated, the facts and circumstances in the case must be carefully reviewed to ensure they support the conclusion that the employee has demonstrated unwillingness or refusal to conform to the rules of conduct or has so breached the employee-employer relationship that other rehabilitation is not appropriate and removal is warranted for the offense.

(1) A removal for misconduct may be based upon the employee's actions on or off the job. It also may be based on actions before appointment which reflect upon the employee's suitability for federal employment. Additional information is in attachment 5.

(2) Normally, a progression of disciplinary measures is taken in an effort to rehabilitate an employee before management decides to remove the individual. Removal for misconduct after appointment is preceded by such a progression unless the misconduct is so serious or the violation of rules and regulations so flagrant that discharge for a first or second offense is clearly warranted.

c. **Furlough for 30 Days or Less.** See e below and paragraph 2h for additional information concerning furlough. Prior approval of HQ USAF is required before furlough of any duration may be effected.

Requests must be submitted through command channels to OCPO/MPKM and must include the reason(s) furlough is considered necessary, efforts made to avoid the need for furlough, the numbers and skills of employees involved and the length of the proposed furlough. No announcement of proposed furlough will be made before approval.

**d. Action Requirements.** An employee against whom an action under this paragraph or paragraph 17 is proposed is entitled to:

(1) At least 30 days advance written notice, except as provided in e below (see paragraphs 17 and 18).

(2) A reasonable time, but not less than 7 days, to answer orally or in writing or both and to furnish affidavits and other documentary evidence in support of the answer.

(3) Representation by an attorney or other representative (see paragraph 29).

(4) A reasonable amount of official time to review the material relied on to support the proposed action, to prepare an answer, and to secure affidavits, if the employee requests time and is otherwise in an active duty status (see paragraph 30a). However, if the employee is covered by a collective bargaining agreement, the provisions of that agreement must be followed.

(5) A written decision and the specific reason(s) for the decision at the earliest practicable date (see paragraph 19).

**e. Exceptions.** Additional information concerning use of the following exceptions is in FPM Chapter 752, Subchapter 3:

(1) **Crime Provision.** The 30 days advance written notice is not required when there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed. Management may require the employee to furnish any answer to the proposed action that the employee wishes to make and affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than 7 days. When the circumstances require immediate action, management may place the employee in a nonduty status with pay for no longer than 10 calendar days to effect the action. Generally, to invoke the crime provision and process a removal or indefinite suspension with a curtailed notice period, management should:

(a) Notify the employee that he or she is being placed in a nonduty status with pay for no longer than 10 calendar days.

(b) Issue either a notice of proposed indefinite suspension pending disposition of the criminal action or of proposed removal when sufficient evidence is available to warrant removal. The notice includes notification of the reasonable period to answer (not less than 7 days).

(c) Issue a decision on the action after the employee has had an opportunity to answer and

management has considered any answer. Complete this action before the employee has been in a nonduty status for more than 10 calendar days.

(2) **Furlough Without Pay Due To Unforeseeable Circumstances.** The advance written notice and opportunity to answer are *not* necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

#### **Section D—Change To Lower Grade Based on Reclassification or Job-Grading Determinations**

**17. Change To Lower Grade.** This paragraph concerns the reduction in grade (demotion) of an employee whose position is downgraded because of a determination that the position warrants classification at a lower grade due to a classification error or job grading standard change when the position has been classified at the higher grade for *less* than 1 year. Therefore, it does not apply to an action which entitles an employee to grade retention under 5 C.F.R., Part 536 (see paragraph 3b(10)). This paragraph also does not apply to the demotion of an employee whose position is downgraded as a result of changes in assigned duties and responsibilities (for example, job erosion; restructuring; or deletion of duties); such demotions are processed under reduction-in-force procedures.

**a.** A determination that a position warrants reclassification at a lower grade due to a classification error or job grading standard change concerns the position only and does not necessarily mean that the incumbent also will be changed to a lower grade. When a position is to be downgraded in such cases, the employee may be entitled to placement in another position according to AFR 40-300, Filling Positions. If the employee is to be demoted under the circumstances of this paragraph, the provisions of paragraphs 16d, 18, and 19 also apply.

**b.** **Contents of Notice of Proposed Adverse Action.** In addition to the requirements of paragraph 18, the notice of proposed adverse action must:

(1) Inform the employee why the position is being downgraded (for example, whether because of an erroneous classification or because of the application of a new or revised standard).

(2) Have attached to the notice of proposed adverse action:

(a) A copy of the official position description.

(b) Either the OPM classification certificate or the classification decision of the Air Force which, in either case, must include an analysis that compares the grade controlling duties and responsibilities of the position with the applicable published classification or job grading standards. If it is not feasible because of the amount of material involved to furnish copies of the

classification guides and standards used to evaluate the position, include a statement of the arrangements made for the employee to review the items.

(3) Do not suggest in the notice of proposed adverse action that a final decision has been made to demote the employee; however, it is proper to state that a decision has been made to downgrade the position.

c. Consideration of Employee's Answer. The employee's answer is considered by an Air Force official according to paragraph 6. When the employee is contesting the classification determination and the final decision is made by an official other than the CPO or a CCPO functional chief, the deciding official must consider the CCPO recommendation concerning the employee's response and the final decision on the classification matter before a final decision is given to the employee.

(1) When the classification decision is the result of an OPM certificate, there is no need to consider the employee's arguments against that decision nor to respond to those arguments in the notice of decision.

(2) The application of an OPM or Air Force decision as a precedent in making the classification determination is an Air Force decision that, if contested, requires consideration and a response in the notice of decision.

d. Effective Date of Downgrading. The downgrading of the position may not be effected before the final decision is made on the proposed demotion or before the expiration of the advance written notice.

#### **Section E—Notices of Proposed Adverse Action, Notices of Final Decision, and Related Requirements**

**18. Notice of Proposed Adverse Action.** The purpose of this notice is to give the employee a fair opportunity to defend himself or herself against the proposed action. The notice must make it clear that the action is proposed but not yet decided. A statement that the notice is of a proposed action and that any answer will be considered before a decision is made is sufficient (see b(5) below).

a. The notice of proposed action must include:

(1) The proposed action, for example, "It is proposed to suspend you for 5 calendar days" (see paragraph 24).

(2) The specific reason(s) for the proposed action (see paragraphs 17b and 25).

(3) For furlough only. The basis for selecting a particular employee for furlough when some but not all employees in a given competitive level are being furloughed.

(4) A statement of the employee's right to review the material relied on to support the reason(s) for action given in the notice *and*, at management's discretion, either: (a) a statement of what arrangements must be made to review the supporting material, or (b) a copy of the supporting material enclosed with the notice and a

reference to the enclosed material (see paragraph 27).

(5) Signature of an official who has authority to propose the action (see paragraph 6).

(6) The date of the notice of proposed action. The notice is dated before delivery to the employee.

b. The notice of proposed action should but is not required to include:

(1) The duration of the notice period (see paragraph 23).

(2) A statement that the employee has a right to answer orally or in writing or both and to furnish affidavits and other documentary evidence in support of the answer (see paragraph 30).

(3) The amount of time allowed for the employee to answer and a statement that consideration will be given to extending the time if the employee requests an extension and provides sufficient reason for the request (see paragraph 30a).

(4) An identification of the person or office to receive any written answer; identification of the person who will receive any oral answer. The person designated must be an individual who has authority either to make or recommend a final decision on the proposed adverse action (see paragraph 28).

(5) A statement that the action is proposed but not yet decided; that the employee's answer(s) made to a designated official will be considered; and that whether or not the employee answers, a final written decision will be issued (see paragraphs 18 and 31).

(6) The amount of official time (if otherwise in an active duty status) allowed for the employee to review the material relied on to support the proposed action, to secure affidavits and other documentary material, and to prepare answer or answers to the notice; statement of how to arrange for the use of official time (identify the person with whom arrangements should be made); statement that consideration will be given to extending the time if the employee requests an extension and provides sufficient reason for the request (see paragraph 30a).

(7) A statement of the employee's right to representation (see paragraph 29).

(8) The name, location, and phone number of the person in the CCPO designated to provide assistance.

(9) The employee's duty status during the notice period.

**19. Notice of Decision.** A written notice of decision is given if a written notice of proposed action was issued and the employee is still on the rolls. This applies whether or not the employee provides an answer to the notice of proposed action and even if a decision is made to cancel the proposed action or to take a lesser action. A written notice of reprimand is required whether the notice of proposed reprimand is oral, written, or not required.

a. The proposed action may be lessened; for example, a proposed notice of removal would not bar a decision

to suspend or change to lower grade instead of remove.

b. If management decides that a more severe action than originally proposed is appropriate, it must give the employee a new notice to propose the more severe action; the earlier notice cannot be used as a notice of proposal for the more severe action.

c. The notice of decision for an adverse action must be delivered to the employee at or before the time the action will be effective, or a diligent effort to make delivery must be made and documented (see paragraph 21).

d. The requirements and recommendations for inclusion in the notice shown in paragraphs e and f also apply to a notice of reprimand.

e. The notice of decision must include:

(1) The decision in specific terms, for example, "It has been decided to (remove you), (suspend you for \_\_\_\_ calendar days), (reprimand you), (etc.)."

(2) The specific reason(s) for the decision. Only reasons specified in the notice of proposed action are considered in arriving at the decision. A reference to the proposed notice and which reason(s) are sustained is sufficient. The reason(s) for a reprimand should be sufficiently explicit to document the basis for the action. If the notice of proposed action informed the employee that his or her past disciplinary record was considered in proposing the action, the notice of decision must inform the employee if the past disciplinary record was relied on in deciding the action to be taken.

(3) The effective date of an adverse action. For suspensions include the first and last day of the suspension and the date and time the employee is to return to duty.

(4) For reprimand only. Information as to when the reprimand expires. (For example, "This reprimand will become a part of your official personnel folder for 2 years from the date of this decision.") Also, include information that the reprimand will be destroyed and notation of the reprimand on the AF Form 971 will be deleted upon the reprimand's expiration.

(5) Information about applicable right to a grievance procedure (see paragraph 33).

(6) Information about applicable right to appeal an adverse action to the Merit Systems Protection Board (MSPB), the address of the appropriate MSPB office for filing the appeal, and the time limits for appeal to the MSPB (see paragraph 33).

(7) Information about applicable right to appeal under AFR 40-771, Appeal and Grievance Procedure (see paragraph 33).

(8) A copy of Optional Form 283, United States Merit Systems Protection Board Appeal, and a copy of the MSPB regulations, if applicable. (Optional Form 283 is available through normal distribution channels; the MSPB regulations are authorized for local reproduction.)

(9) The signature of an official who has authority to

decide the action (see paragraph 6).

(10) The notice of decision date. The notice is dated before delivery to the employee.

f. The notice of decision should but is not required to include:

(1) A statement that the employee answered orally or in writing or both and that all answers were considered or that the employee did not answer (see paragraph 31).

(2) The name, location, and phone number of the person in the CCPO designated to provide assistance.

**20. Timeliness of Action.** Management initiates inquiry while information is fresh and readily available. Normally, action is initiated as soon as the facts are known. In the event federal criminal charges have been or may be brought against the employee, an objection by the United States Attorney to proceeding with the administrative action is given serious consideration and is honored where possible. If a substantial delay in effecting action is anticipated, the employee should be informed that action is being considered, that a course of action will be determined when possible, and that the employee will be informed when the decision is made.

**21. Delivery of Notices.** Notices may be delivered either personally or by mail. The delivery method is important; advice concerning preferable means is available in the CCPO. If an action is grieved or appealed, management should be prepared to show that either the employee received the required notices on a timely basis or that its actions to accomplish timely delivery were intelligent and diligent under the circumstances. Management must maintain accurate records of every attempt at delivery as part of the file required by paragraph 22. Evidence of an employee's effort to avoid delivery is particularly important. When the notice is delivered personally, the person who delivers it records the place, date, and time of delivery on the file copy. The employee may also be asked for written acknowledgment of receipt of notices. The employee's written acknowledgement does not indicate agreement with the notice content, but only receipt of the notice.

**22. Recording Actions.** A record of actions taken under this publication is sent to the CCPO for retention. That record includes a copy of the notice of proposed action, if applicable, any answer the employee may have made (including summaries of oral answers), the notice of decision and the reasons therefore, any order effecting the action, a statement of management's reasoning as to the appropriateness of the penalty imposed in disciplinary actions, and any supporting material. Supporting material is that on which management based its notice of proposed action, if applicable, and relied on to support the reasons in the notice of decision (see paragraph 27 for a discussion of the supporting material).

a. A copy of the record is furnished to the MSPB and to AFCARA upon their request and to the employee affected upon the employee's request.

b. Reprimands are temporary records whose retention period is 2 years from the date of the notice of decision to reprimand. Expired reprimands are screened from Official Personnel Folders and are destroyed. Reprimands which are part of the documentation of a case processed in an authorized appellate or grievance forum (for example, AFR 40-771 or AFR 40-1613, Discrimination Complaints,) are retained in that documentation. References to expired reprimands are deleted from the AF Form 971 (see paragraph 14a(1)).

c. Oral admonishments are recorded on the AF Form 971 only. References to oral admonishments are deleted from the AF Form 971 2 years from the date of the admonishments (see paragraph 13a(2)).

### 23. Advance Notice Period:

#### a. Minimum Notice Period:

(1) There is no specific notice period for an oral admonishment or a reprimand.

(2) The minimum notice period for a suspension of 14 days or less *must* not be less than 24 hours. Within the Air Force, this period is normally not less than 7 days.

(3) The minimum notice period for an adverse action under paragraphs 16 and 17 is 30 days, except as provided in paragraph 16e.

b. The time periods specified in paragraph a are minimum periods and, although longer periods are not required by this document, additional time should be taken if needed to satisfy all applicable requirements. There is no requirement that a tentative date for action be set or implied at the time the notice of proposed action is issued. It is sufficient to state in the notice of proposed action that the adverse action taken, if any, will be made effective "not earlier than (specify the number of days of advance notice) days from the date you receive this notice."

**24. Identification of the Proposed Action.** State specifically the most severe action proposed. Suspensions, other than those of indefinite duration, are stated in terms of the exact number of calendar days. A proposed action may later be reduced, but a more severe action cannot be taken unless the employee is given a new advance notice to propose the more severe action. Proposing the most severe action under all circumstances on the expectation that it may later be reduced is not recommended. When reduction in pay is involved, state the exact salary the employee is to receive. For change to lower grade, state the exact position title and grade the employee will receive. For change to lower grade within or between pay systems when there is no entitlement to grade retention, add a statement as to whether or not the employee is entitled

to pay retention.

**25. Specific Reasons (Includes Causes of Action).** The notice of proposed action informs the employee of all the specific reasons relied on to support the proposed action. (For reprimands, this information is included in the notice of reprimand.) It is not necessary to include every reason that *might* have been used to support management's action. The current cause of action normally is covered in the introductory paragraph of the notice of proposed action with supporting reasons (such as prior offenses) addressed in separate paragraphs. Causes for adverse action may be reasons personal to the employee such as on or off-the-job misconduct, delinquency, or physical or mental inability to perform the duties of the position. Causes also may be impersonal reasons such as the application of new or revised classification standards or the need to correct a merit promotion error. The management official who initiates the action is responsible for identifying and properly stating the cause(s) of action.

**26. Addition of Reasons.** If a notice is amended to add further reasons for action, management must make sure that the employee is given sufficient time to answer the added reasons and that no action is taken until the required number of days of advance notice has elapsed from the date the added reasons are submitted to the employee.

**27. Material Relied on To Support the Action.** Management assembles the material relied on to support the reason(s) for the proposed action and makes the file available to the employee. This material may include, but is not limited to, statements of witnesses, documents, investigative reports or extracts from the reports, and relevant material concerning any previous record or action relied upon as part of the basis for the current action. A copy of the supporting material may, at management's discretion, be enclosed with the notice of proposed action. If this is done, the notice includes a statement that a copy of the material is enclosed. Since all supporting material must be open to review by the employee, the employee's representative, or the employee's designated physician under 5 C.F.R. 297.204(c), material which cannot be shown to these individuals because its disclosure would violate a pledge of confidence, or because it is in some way restricted or classified, cannot be used to support reasons for the action. If management wishes to use such material, it must obtain it in a form which can be made available for the employee's review. See FPM Chapter 752, Subchapter 3.

**28. Official To Whom Answer Is Made.** Normally, the signer of the notice of final decision receives answers whether they are made orally or in writing. Another



person may be designated to receive the answer; however, that person must be in a position superior to the affected employee (not necessarily supervisory or one of a higher grade) who has the authority to recommend final decision or a designated CCPO official (see paragraph 6b(2)).

## 29. Employee Representation:

a. A union representative of an appropriate bargaining unit is given the opportunity to be represented at any examination of an employee in the unit by a representative of the agency in connection with an investigation if:

(1) The employee reasonably believes the examination may result in disciplinary action against the employee.

(2) The employee requests representation.

b. An employee who has received a notice of proposed disciplinary or adverse action may obtain advice and assistance in the preparation of his or her answer. Also, the employee may be represented by an attorney or other representative when making an oral answer to a proposed adverse action. The representative may be present during the answer or may make the answer for the employee. Time spent by the personal representative is official duty time if the person is otherwise in an active duty status or according to a collective bargaining agreement.

(1) Employees in an exclusive bargaining unit have the right to be represented according to the terms of any governing collective bargaining agreement.

(2) Employees who are not in an exclusive bargaining unit have the right to be represented by the person of their choice, subject to paragraphs c and e.

c. Disallowance of Representative. (See FPM Chapter 752, Subchapters 2 and 3.) Management may disallow the employee's choice of an individual as the representative if (1) activities of the individual as a representative would cause a conflict of interest or position; (2) release of an employee from his or her official position to serve as a representative would give rise to unreasonable costs to the government; or (3) priority work assignments of the individual preclude his or her release to serve as a representative.

NOTE: The disallowance must be in writing. It must fully, clearly, and specifically state the basis for the disallowance. Citations of regulatory provisions and other authorities relied upon are included. It must be delivered to the employee within 5 workdays after notification of the employee's selection of a representative or as soon as possible thereafter, if the employee is not available to receive the disallowance. This notice of disallowance will become the basic explanation of management's position in an adjudication under paragraph e.

d. Bargaining Unit Employee's Challenge of Disallowance of Representative. An employee in an

exclusive bargaining unit has the right to challenge the decision to disallow his or her choice of a representative through the provisions of the collective bargaining agreement or 5 U.S.C. 7118, as appropriate.

e. Nonbargaining Unit Employee's Challenge of Disallowance of Representative:

(1) An employee who is not in an exclusive bargaining unit has the right to challenge the decision to disallow his or her choice of a representative by addressing the challenge, through the CCPO, to the AFCARA, Appellate Review Board (AFCARA/ARB), Bldg 5681, Third Floor, Room S-7, Bolling AFB DC 20332.

NOTE: It must be received by the CCPO within 5 days after receipt of the disallowance. The challenge must provide explanation of why the employee believes the designation to be proper and should explain why the disallowance is improper.

(2) Within 2 workdays after receipt of the employee's challenge, the CCPO sends the file to AFCARA/ARB for decision. The file will contain clean, readable copies only of paragraphs (a) through (i). Copies of documents will not contain markings not on originals of those documents unless an unmarked copy is not available. When a marked copy is submitted, the unavailability of an unmarked copy will be certified, and all extraneous markings will be identified as such. The file contains, as applicable:

(a) The designation of representation.

(b) The disallowance.

(c) The employee's challenge.

(d) The employee's official position description.

(e) The designated representative's official position description.

(f) Official organization charts showing the relationship among relevant positions.

(g) Relevant official functional statements.

(h) Local and MAJCOM (or comparable organization) regulations which are relevant.

(i) Cases, policy statements, and other materials cited as authorities.

NOTE: A copy of the transmittal letter to AFCARA/ARB is provided to the employee concurrently with transmittal.

(3) The Director or Deputy Director, AFCARA or the Executive Secretary, AFCARA/ARB will, on an expedited basis, issue a final decision based upon the file described in (2) above. The decision is sent to the employee with a copy to the CCPO. That decision is not subject to further administrative review.

(4) All action on the disciplinary or adverse action is held in abeyance pending receipt of the decision rendered under (3) above.

30. Employee's Answer. An employee who has received a written notice of proposed adverse action is entitled to answer that notice to the designated official. There is no restriction on the number of replies that may be made.

The answer is the employee's explanation of why the proposed action should not be taken (see paragraph 32 for review of answers as a result of premature appeals or grievances).

**a. Time Allowed:**

(1) The employee is entitled to a reasonable response period during which he or she may obtain advice and assistance, review the material relied on to support the reasons cited in the notice of proposed action (if applicable), obtain affidavits and statements, consider appropriate courses of action, and prepare and submit an answer or answers.

(a) There is no established response period for an oral admonishment or reprimand.

(b) The response period for a suspension of 14 days or less *must* not be less than 24 hours. Within the Air Force, this period is normally not less than 7 days.

(c) The response period for adverse actions under paragraphs 16 and 17 must be at least 7 days.

(2) Within the response period, the employee must be allowed a reasonable amount of official time, if requested and otherwise in an active duty status, for the purposes specified in paragraph a(1). However, if the employee is covered by a collective bargaining agreement, the provisions of that agreement must be followed.

(3) Each action initiated requires separate determinations of what constitutes a reasonable total response period and a reasonable amount of official time. These determinations are based on the facts and circumstances of the individual case, the complexity of the issues involved in it, the amount and type of material in the file to be reviewed, the need for and the difficulty in obtaining assistance, etc. If the employee requests additional time, the request should be granted where it is possible and reasonable. A standard, predetermined definition of "reasonable" is not authorized.

**b. Character of Answer.** The employee's answer may be oral or in writing or both. When an answer is oral, a summary of the primary points of the interview is made. If possible, the signature of the employee is obtained to indicate agreement with the accuracy of the record. An oral answer does not affect the employee's additional right to answer in writing.

**c. Content of Answer.** The employee must be given the opportunity to make whatever answer he or she believes may influence the final decision in the employee's favor or reduce the penalty. The answer may contain denials or offer evidence to controvert the charges or lessen the seriousness of the charge. The employee's answer may not be restricted to matters related solely to the reasons stated in the notice of proposed action. The employee must be permitted to plead extenuating circumstances or to make such other statements the employee considers appropriate. The employee is entitled to submit affidavits and statements in support of the answer.

**31. Consideration of Answer.** Each answer to a designated official received before issuance of the notice of final decision is given thorough and objective consideration. The notice of final decision may not be issued before the expiration of all time allowed for answer, including extensions.

a. If an employee's answer in any way refutes the reasons contained in the advance notice, the evidence must be reviewed objectively and a determination made as to whether the proposed action is supported by a "preponderance of the evidence" and should stand as proposed or whether the action should be modified or withdrawn.

b. Whenever the need for collecting additional evidence or other unusual circumstances cause undue delays in arriving at a final decision, the person designated to receive the replies explains the delays in writing to the employee. The letter includes the approximate date that the final decision will be made.

c. Under no circumstances will the decision to take an action be based solely on the conclusion that the employee "failed to refute" the charges.

**32. Premature Appeal or Grievance.** A notice of proposed action or a notification that initiation of action is being contemplated is not subject to appellate or grievance review except as part of an appeal or grievance of a final decision to effect the action. An attempt to obtain appellate or grievance reconsideration of a proposed action is considered to be an answer to the notice of proposed action and is referred to the official designated in that notice to receive the employee's answer. If the action is effected and the employee desires to contest it, he or she must submit a timely appeal or grievance.

**33. Appeal and Grievance Rights.** Disciplinary actions and adverse actions are subject to review under the procedures of the MSPB, the Air Force, or negotiated grievance procedures between the Air Force and exclusive collective bargaining units, as applicable. Written notices of final decision contain specific information about those rights; and, if alternatives exist, the employee is required to select the procedure to be used. Some general rules are included below; but because not all employees have the same appellate or grievance rights, an employee who has received a notice of final decision should carefully review the appellate or grievance information in it and may ask for CCPO assistance on specific questions.

NOTE: An employee may not request disciplinary or adverse action against a management official or employee as a remedy under Air Force appellate or grievance procedures (see AFR 40-771 and AFR 40-1613).

**a. Oral Admonishments, Reprimands, and Suspension for 14 Days or Less.** Bargaining unit employees who

have access to a negotiated grievance procedure may grieve those actions through that procedure. Bargaining unit employees without access to a negotiated grievance procedure and nonbargaining unit employees may grieve such actions through the Air Force grievance procedure in AFR 40-771.

**b. Removals, Suspensions for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less.** Except for an individual covered by paragraph 4, an employee who is a preference eligible or is in the competitive service may appeal an action covered by this paragraph to the MSPB or grieve the action through the negotiated grievance procedure, where applicable, but not both. A nonpreference eligible in the excepted service may grieve through the negotiated grievance procedure, where applicable, or appeal according to AFR 40-771, but not both.

#### Section F—Selection of Appropriate Disciplinary Actions

**34. Penalty Selection.** The determination of which penalty to impose in a particular situation requires the application of responsible judgment to Air Force disciplinary policy. The disciplinary action taken is based on the conclusions that there is sufficient evidence available to support the reason(s) for action and that the action is warranted and reasonable in terms of the circumstances which prompted it.

**a. Governing Criteria.** In determining the appropriate penalty, management observes the principle of "like penalties for like offenses in like circumstances." This means that penalties will be applied as consistently as possible considering the particular circumstances of the cause for disciplinary action. It does not mean that penalties will be applied with "...mathematical rigidity or perfect consistency regardless of variations in circumstances or changes in prevailing regulations, standards, or mores," (Douglas v. Veterans Administration, et al., MSPB Decision No. AT075299006, 10 April 1981). The penalty selected should not be disproportionate to the offense, should contribute to the solution of the problem and to the attainment of an effective management environment, and should take into consideration all relevant penalty selection factors.

**b. Factors in Penalty Selection.** Some of the factors that may be relevant in selecting the appropriate penalty are listed below. Not all of the factors will be relevant in every case and others may be relevant in particular cases. Selection of an appropriate penalty involves a responsible balancing of the relevant factors based on the individual case. Some of the relevant factors may weigh in the employee's favor while others may not or may even cause management to view the situation as more serious and deserving of a more severe penalty than originally thought. The factors are:

(1) The nature and seriousness of the offense, and its relation to the employee's duties, position, and

responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.

(2) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.

(3) The employee's past disciplinary record.

(4) The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.

(5) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties.

(6) The consistency of the penalty with those imposed upon other employees for the same or similar offenses in like or similar circumstances.

(7) The consistency of the penalty with the Guide to Disciplinary Actions (attachment 3).

(8) The notoriety of the offense or its impact upon the reputation of the Air Force.

(9) The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.

(10) The potential for the employee's rehabilitation.

(11) The mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter.

(12) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

**c. Penalty Support.** If an action is grieved or appealed, management must be prepared to support the appropriateness of the penalty (see paragraph 12b(2)). A statement of management's reasoning as to the appropriateness of the penalty imposed must be included in the record described in paragraph 22.

**35. The Guide To Disciplinary Actions (Attachment 3).** The guide helps management select appropriate penalties by providing a framework for interrelating all the relevant facts to possible courses of action and to available penalties. It is used to evaluate causes of action (offenses), whether or not specifically described, so that a sound, supportable penalty may be selected. Mechanical use of the guide must be avoided. The guide is an expression of typical causes and typical penalties only; therefore, causes of action and penalties in the guide may not meet the demands of all situations. It is to be used as guidance along with supervisory judgment in considering the particular circumstances of the matter and the appropriateness of the particular action contemplated.

**a. Cause of Action.** The "Cause of Action" column in

the guide explains many of the common offenses, but it does not include every possible one. In using that column to apply general Air Force policy, the supervisor compares each cause of action in the particular case at hand to all of those described and uses those that relate to the situation. If there is a corresponding cause of action shown in the guide, it is the one used to guide further consideration. If the cause of action in the particular case at hand is not shown, the supervisor fits that offense into the general framework by relating its nature and seriousness to the fundamental characters of those listed. It is not necessary to use the precise language in the guide to describe an offense. Additional information about specifying the offense is in FPM Chapter 752, Subchapter 3.

**b. Typical Penalty:**

(1) The "Typical Penalty" column does not dictate the penalty to be imposed for a particular or comparable offense; rather, it establishes the range of penalties within which the penalty imposed usually falls. No minimum penalty is prescribed for any cause of action, except where required by law; and none may be established by policy statement or by implementing instruction. Unless restricted by law, management may impose no penalty at all or may choose from penalties ranging from oral admonishment to removal.

(2) When considering which offense column of the guide to use, it is not necessary to establish that prior offenses under consideration were of the same character as the current offense. The severity of the penalty depends on the relationship of the current offense to relevant factors including those discussed in paragraph 34b. Attachment 4 offers further guidance on how to determine the penalty.

**36. Progression of Penalties.** A progression of penalties means the application of increasingly more severe penalties as the employee continues to breach the employee-employer relationship. That progression is usually applied because of its significance to the constructive disciplinary process (see paragraph 9).

**a.** A progression of penalties usually begins with oral admonishment and proceeds through reprimand to suspension; if the employee continues not to meet responsibilities, the progression of penalties may end in removal.

**b.** This progression means, for example, that where a 3-day suspension was imposed for a first offense, a second offense would call for at least a 3-day suspension even though the applicable items in the guide might show a range of reprimand to removal. Similarly, if a 5-day suspension was imposed for a second offense, consideration of the penalty to be imposed for a third offense would begin with a 5-day suspension.

**c.** A removal for misconduct or delinquency is effected only after a progression of penalties unless discharge for a first or second offense is clearly

warranted. A progression need not include suspension(s) if the preceeding reprimand(s) clearly show that the employee has been given understandable notice of management's concern for the repetitive improper behavior and of the future action that management might take as a result of that concern (see paragraph 14a(2)).

**37. Combination of Offenses.** A particular situation may involve only one offense, may appear to involve more than one offense when there is actually only one, may involve more than one significant offense, or may involve more than one offense only one of which is significant. Avoid multiplying a single offense into several and including petty instances when the significant offense provides ample basis for taking necessary action. When different, significant offenses occur in combination, each offense may be included as a cause of action. In this case, a more severe penalty may be imposed than would be appropriate for a single offense; but the penalty normally will not exceed that typically imposed for the most serious offense as determined by applying the appropriate offense column of the guide for the number of offenses in combination, including any prior offenses.

**38. Series of Offenses.** A series of offenses occurs when more than one offense is committed by an employee at different times and appropriate action could not be completed on each of these offenses individually before another was committed, even though management has proceeded at a reasonable pace. A more serious penalty may be assessed for a series of offenses than would be appropriate for a single offense. However, the penalty imposed normally will not exceed the most severe shown in the appropriate offense column of the guide (considering the number of offenses in the series and any prior offenses) for the most serious cause of action in the series.

**39. Prior Offenses.** See paragraph 2q. Prior offenses may be used in determining the severity of the penalty for a current offense even though they may have involved different infractions. When used in this manner, the prior offenses and the resulting penalties imposed are shown in the notice of proposed action (if any) and in the notice of final decision.

**a.** A suspension may be used only if its effective date was within the 3 years preceeding the date of the notice of proposed action for the current offense.

**b.** An oral admonishment or a reprimand may be used only if its effective date was within the 2 years preceeding the date of the notice of proposed action for the current offense.

**c.** A breach of the employee-employer relationship for which an oral admonishment was imposed is not considered an "offense" for the purpose of applying

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attachment 3 and, therefore, is *not* used to determine that the second or third offense columns of attachment 3 is appropriate when selecting a penalty.

(1) An oral admonishment may be used to support management's decision that a reprimand would be an appropriate penalty, but it may *not* be used to support

selection of an adverse action penalty.

(2) An oral admonishment may be used in *any* disciplinary action to document that an employee has been apprised of a rule, regulation, other directive, or of his or her past misconduct or delinquency.

BY ORDER OF THE SECRETARY OF THE AIR FORCE

OFFICIAL

CHARLES A. GABRIEL, General, USAF  
Chief of Staff

JAMES L. WYATT, JR., Colonel, USAF  
Director of Administration

#### SUMMARY OF CHANGES

This publication updates the directive's coverage of employees and actions (para 3); deletes the requirement for adverse action approval by the second level or higher supervisor (para 6); requires that, as a minimum, adverse actions be coordinated with the staff judge advocate (para 7); adds figure 1, Oral Admonishment or Reprimand; deletes the requirement for HQ USAF approval of suspensions in excess of 30 days; states that suspensions seldom should exceed 30 days unless the indefinite suspension provision of paragraph 16e(1) applies (para 15a(3)); deletes information that the normal period of a suspension is not to exceed 10 days; adds information about furloughs and exceptions to advance notice periods and the right to answer (para 16); deletes references to reduction in rank according to the Civil Service Reforms Act; adds information and requirements for changes to lower grade based on reclassification or job-grading determinations (para 17); changes the minimum notice period of a suspension of 14 days or less from 14 days to at least 24 hours and normally not less than 7 days (para 23a(2)); changes the usual period for the employee to answer from not less than 10 days to not less than 7 days (para 30a); adds criteria on selection of appropriate penalties (para 34a); adds factors in penalty selection according to latest MSPB findings (para 34b); adds requirement that management's reasoning as to the appropriateness of the penalty assessed be documented (para 34c); partially deletes maximum penalties in attachment 3, Guide to Disciplinary Actions; revises some typical penalties, combines and adds to and revises causes of action, and adds additional causes throughout attachment 3.

**PROCEDURAL PROTECTIONS FOR DISCIPLINARY ACTIONS AND ADVERSE ACTIONS**

Employment Status <sup>1</sup>	Adverse Action Except Suspension of 14 Days or Less		Suspension of 14 Days or Less		Reprimand and Oral Admonishment
	OPM	USAF	OPM	USAF	USAF
Reemployed Annuitant	No	No	No	Yes <sup>2</sup>	Yes
Overseas Limited <sup>3</sup>	Yes	Yes	Yes	Yes	Yes
Career Conditional <sup>3</sup>	Yes	Yes	Yes	Yes	Yes
Career <sup>3</sup>	Yes	Yes	Yes	Yes	Yes
Excepted Service					
Veteran (except Schedule C, see below) <sup>3,4</sup>	Yes	Yes	No	Yes	Yes
Schedule B with Competitive Status <sup>3</sup>	Yes	Yes	Yes	Yes	Yes
Schedule A Non-Veteran <sup>4,5</sup>	No	Yes	No	Yes	Yes
Schedule C	No	No	No	Yes <sup>2</sup>	Yes
Schedule B Non-Veteran, no Competitive Status <sup>3,4,5</sup>	No	Yes	No	Yes	Yes
Section 6 Dependent School Personnel <sup>3</sup>	No	Yes <sup>6</sup>	No	Yes	Yes
TAPER <sup>3</sup>	Yes	Yes	Yes	Yes	Yes
Term <sup>3</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>	Yes	Yes	Yes
Temporary Limited	No	No	No	Yes <sup>2</sup>	Yes
Indefinite <sup>3</sup>	Yes	Yes	Yes	Yes	Yes
Status Quo <sup>3</sup>	Yes	Yes	Yes	Yes	Yes
Career Executive Assignment <sup>3</sup>	Yes	Yes	Yes	Yes	Yes
Noncareer Executive Assignment— Non-Veteran	No	No	No	Yes <sup>2</sup>	Yes
Limited Executive Assignment <sup>3</sup>	No	No	No	Yes	Yes
Appointment With Competition <sup>3</sup>	Yes	Yes	Yes	Yes	Yes
1. This attachment does not apply to the Senior Executive Service.					
2. In rare circumstances a suspension not to exceed 5 days is authorized.					
3. During probationary period, trial period, or first year of current continuous service in the same or similar positions.	No	No	No	Yes <sup>2</sup>	Yes
4. At expiration of term for which appointed.	No	No			
5. If appointed under Schedule A, Section 213.3102(t)(Mentally Retarded); Schedule A, Section 213.3102(u)(Severely Disabled); or Schedule B, Section 213.3202(k)(Mentally Restored).	No	No	No	No	Yes
6. If not re-selected for next school year (see AF Supplement to FPM Chapter 302, Subchapter 7).	No	No	—	—	—

### PROHIBITED PERSONNEL PRACTICES

The prohibited personnel practices enacted by the Civil Service Reform Act of 1978 are summarized below for general information only. For meaning of terms and for specific provisions of the Act, refer to Title 5, U.S.C., Section 2302.

**Prohibited Personnel Practices.** Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, must not:

- Discriminate for or against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation.
- Solicit or consider any recommendation or statement on a person who requests or is being considered for a personnel action unless the recommendation or statement is based on personal knowledge or records of the one furnishing it and is an evaluation of the person's work performance, ability, aptitude, general qualifications, character, loyalty, or suitability.
- Use official authority to coerce political activity, to provide political contribution or service, or to retaliate against an employee or applicant for refusal to take part in such political activity.
- Deceive or willfully obstruct a person in the right to compete for employment.
- Influence a person's withdrawal from competition to improve or worsen the employment prospects of another.
- Grant any preference or advantage not authorized by law, rule, or regulation to an employee or applicant to improve or worsen the employment prospects of a particular person.
- Appoint, employ, promote, or advance relatives in his or her own agency or advocate such action.
- Take or fail to take a personnel action against employees or applicants who exercise their appeal rights or lawfully disclose violations of law, rule, or regulation, mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.
- Discriminate for or against an employee or applicant on the basis of conduct which does not adversely affect the performance of the employee or others (this does not prohibit taking into account conviction for crime under laws of any state, the District of Columbia, or the United States when determining suitability or fitness).
- Take or fail to take any other personnel action if to do so violates any law, rule, or regulation concerning merit system principles in title 5, U.S.C., Section 2301.

## GUIDE TO DISCIPLINARY ACTIONS

NOTE: See Section F of this regulation for information concerning use of this guide and selection of appropriate penalties in disciplinary actions.

## 1. Cause of Action Column:

a. IT IS NOT NECESSARY TO STATE A CAUSE OF ACTION EXACTLY AS SHOWN IN THIS COLUMN. What is important is to state exactly what the employee did wrong, preferably without using legal terms suggesting crime. If such legal terms were used, it might be necessary to prove all the elements necessary to establish that the crime has been committed, including felonious intent.

b. Cause is best identified by a specific charge or label for the offense *if* that charge or label is relevant. BE CAREFUL TO SELECT A LABEL WHICH FITS THE FACTS AND NOT TO DISTORT THE FACTS TO FIT A SPECIFIED OFFENSE IN THE GUIDE.

2. Typical Penalty Column. This column does not dictate the penalty to be imposed for a particular (or comparable) offense; rather, it establishes the range of penalties within which the penalty imposed usually falls. Unless otherwise restricted, management may impose no penalty at all or has available a choice of severity of action ranging from oral admonishment to removal.

NOTE: See paragraph 4 of this document for information concerning employees in probationary or trial period, or in first year of current continuous service in the same or similar positions.

a. Oral Admonishment. An oral admonishment is a disciplinary action that is often adequate to effect the required correction or improvement, particularly when

the employee has no previous history of violations. See paragraph 39c for the use of the oral admonishment in relation to this attachment.

b. Reprimand. A reprimand is a severe disciplinary action that should be adequate for many disciplinary situations which require an action more severe than an oral admonishment. It may be made more "severe" according to paragraph 14a(2).

c. Suspension. A suspension is a severe disciplinary action. Ordinarily, it is the final step in the disciplinary process before removal and is accompanied by a warning to the employee that a further violation of rules *could* result in removal (see paragraph 15a(1)).

(1) A suspension may *not* be imposed for indebtedness nor performance-related factors when the situation is nondisciplinary (see paragraph 10).

(2) Suspensions seldom should exceed 30 days unless the indefinite suspension provision of paragraph 16e(1) is used.

d. Removal. Removal is the most severe disciplinary action. Before it is initiated, the facts and circumstances in the case must be carefully reviewed to ensure they support the conclusion that the employee has demonstrated unwillingness or refusal to conform to the rules of conduct or has so breached the employee-employer relationship that other rehabilitation is not appropriate and removal is warranted for the offense.

Cause of Action (Offense)	Typical Penalty		
a. See first page of this attachment b. See AFRs 30-30 and 40-735 for violation of conflict of interest regulations. c. Review paragraphs 1, 9, 10, section F, and attachment 5 before proceeding.	a. See first page of this attachment. b. See paragraphs 13, 14, 15, 16, and attachment 1.		
	First Offense	Second Offense	Third Offense
1. Failure to honor valid debts or legal obligations (see AFR 40-735). NOTE: There is no offense unless (a) the validity of the debt is established; (b) there has been a failure to either arrange for or comply with a repayment schedule; and (c) there is a <i>current</i> complaint from the <i>creditor</i> . Suspension as a penalty is not authorized. Maximum penalty for third offense is reprimand and for fourth offense, reprimand with the added warning that a "continuation of offenses could result in removal."	Reprimand	Reprimand	Reprimand



	First Offense	Second Offense	Third Offense
2. Tardiness of less than one-half hour. NOTE: Counseling or an oral admonishment is normally used for a first occurrence of tardiness. A fourth offense would typically result in a suspension of 5 days or less with the added warning that a "continuation of offenses could result in removal."	Reprimand	Reprimand	1-Day Suspension
3. Tardiness of one-half hour or more, leaving the job without permission, delayed return from lunch, unauthorized absence of 8 hours or less.	Reprimand	Reprimand to 5-day suspension	Reprimand to removal
4. Unauthorized absence of more than 8 hours. NOTE: A removal using adverse action procedures in this regulation, may be initiated for a first or later offense after passage of a reasonable time (a minimum of 10 calendar days) when the employee fails to report for duty and fails to notify management of his or her intentions concerning return to duty, and when management has been unable to ascertain the employee's intentions concerning return. The Air Force does not use the procedures in FPM Chapter 715, Subchapter 3, to remove an employee for abandonment of position.	Reprimand to 5-Day Suspension	Reprimand to 14-Day Suspension	5-Day Suspension to Removal
5. Failure to request leave according to established procedures, or failure to honor a valid denial of a leave request.	Reprimand to 5-Day Suspension	Reprimand to 14-Day Suspension	5-Day Suspension to Removal
6a. Failure to observe safety practices including failure to use safety equipment such as eye protection devices and failure to comply with hearing conservation program requirements.	Reprimand to 1-Day Suspension	Reprimand to 5-Day Suspension	Reprimand to Removal
6b. When failure may result in serious injury, loss of life, or major damage to property.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal
7a. Violation of security regulations when the breach does not result in release of security information to unauthorized sources and there is no evidence of a compromise of classified information.	Reprimand	Reprimand to 30-Day Suspension	10-Day Suspension to Removal
7b. If violation is intentional or results in unauthorized release or compromise of security information.	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal
8a. Drinking, transferring, or selling alcoholic beverages on duty or on government premises except where authorized. Reporting for duty under the influence of intoxicating liquor.	Reprimand to 5-Day Suspension	Reprimand to Removal	5-Day Suspension to Removal
8b. Being on duty so intoxicated as to be unable to properly perform assigned duties, or to be a hazard to self or others. NOTE: Actions involving these offenses must be carefully evaluated to ensure that the requirements of AFR 40-792, Drug and Alcohol	Reprimand to Removal	5-Day Suspension to Removal	5-Day Suspension to Removal

	First Offense	Second Offense	Third Offense
Abuse Prevention and Control Program, are met. Close consultation with the CCPO, social actions office, and the base medical services is required.			
9a. Gambling during work -hours.	Reprimand	Reprimand to 5 -Day Suspension	Reprimand to Removal
9b. Promotion of or assisting in operation of organized gambling on duty or on government premises.	Reprimand to Removal	5 -Day Suspension to Removal	10 -Day Suspension to Removal
10a. Loafing or sleeping on duty.	Reprimand	Reprimand to 14 -Day Suspension	Reprimand to Removal
10b. When such action may result in injury, loss of life, or damage to property.	Reprimand to Removal	5 -Day Suspension to Removal	10 -Day Suspension to Removal
11a. Possessing, transferring, selling, or using drug abuse paraphernalia as defined in AFR 40 -792.	Reprimand	Reprimand to 14 -Day Suspension	Reprimand to Removal
11b. Use or possession of marijuana, a narcotic, or dangerous drug on government premises or on duty. Reporting for duty while under the influence of marijuana, a narcotic, or dangerous drug.	Reprimand to 5 -Day Suspension	5 -Day Suspension to Removal	14 -Day Suspension to Removal
11c. Being on duty so impaired by marijuana, a narcotic, or dangerous drug as to be unable to perform duties properly or to be a hazard to self or others.	Reprimand to Removal	14 -Day Suspension to Removal	Removal
11d. Unauthorized sale or transfer of marijuana, a narcotic, or dangerous drug on government premises, or during the duty hours of any person involved. NOTE: A dangerous drug is one so defined by the Attorney General of the United States. Marijuana is any intoxicating product of the hemp plant, cannabis (including hashish), or any synthesis of them. When a narcotic, dangerous drug, or marijuana has been prescribed for medical purposes under an appropriate authority, its use as prescribed is not an offense under this regulation. The penalty selected should consider the offender's status as an experimenter, user, or addict and should, whenever possible, contribute to his or her rehabilitation and recovery. Actions involving those offenses must be carefully evaluated to ensure that the requirements of AFR 40 -792 are met. Coordination with the CCPO, social actions office, base medical services, and judge advocate office is required.	Reprimand to Removal	Removal	

	First Offense	Second Offense	Third Offense
12. Making false, malicious, or unfounded statements against other employees, supervisors, other officials, or subordinates with the intent to destroy or damage the reputation, authority or official standing of those concerned.	Reprimand to Removal	5-Day Suspension to Removal	10-Day Suspension to Removal
13. Soliciting contributions from other government officers or employees for gifts or presents to those in superior official positions. Accepting gifts or presents offered or presented as contributions from persons in government employ receiving lower salary (see FPM Chapter 735 and AFR 40-735).	Reprimand	Reprimand to 14-Day Suspension	Reprimand to Removal
14. Rude, boisterous play which adversely affects production, discipline or morale; use of abusive or offensive language; quarreling or inciting to quarrel; or interfering with the production of others.	Reprimand to Removal	Reprimand to Removal	Reprimand to Removal
15. Theft, actual or attempted. NOTE: Penalty is determined considering value of property and relevant factors as explained in paragraph 34b.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal
16. Deliberate misrepresentation; falsification, exaggeration or concealment of a material fact in connection with any official document; withholding of material facts in connection with matters under official investigation; refusal to testify or cooperate in an inquiry, investigation, or other official proceeding. NOTE: For restrictions on salary payment, see FPM Supplement 990-2, Book 531, Subchapter S2-7.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal
17. Fighting, threatening or inflicting bodily harm on another, physical resistance to competent authority or indecent or immoral conduct.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal
18. Discourteous conduct. Includes discourteous conduct to the public.	Reprimand to 5-Day Suspension	Reprimand to 14-Day Suspension	Reprimand to Removal
19. Delay or failure to carryout assigned work or instruction in a reasonable period of time.	Reprimand	Reprimand to 5-Suspension	Reprimand to Removal
20. Insubordinate defiance of authority, refusal to comply with proper orders, wanton disregard of directives or insolence.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal
21a. Loss of, damage to, unauthorized use or destruction of property (including motor vehicles and aircraft), records or information.	Reprimand	Reprimand to 5-Day Suspension	Reprimand to Removal
21b. When willfulness or intent is involved. NOTE: 31 U.S.C. 638a(c)(2) provides that any officer or employee who willfully uses or authorizes use of government <i>passenger</i> motor vehicles or aircraft for other than official purposes will be suspended for not less than 1 month and will be suspended for a longer period	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal

	First Offense	Second Offense	Third Offense
or removed if circumstances warrant. (The minimum 1-month period is established as the effective date of the suspension through the tour of duty for the preceeding date of the next month. Examples: 15 July through 14 August or, if the employee's tour of duty is at night and includes portions of 2 days, from the time the tour of duty begins on 15 July through the end of the tour of duty on 15 August.)			
22. Calling or participating in a strike, work stoppage, or slowdown.	Removal		
23. Picketing if such action interferes with agency operations.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal
24. Careless workmanship or negligence:	Reprimand	Reprimand to 5-Day Suspension	Reprimand to Removal
----- a. When consequences may be extreme, an attempt is made to conceal defective work or there is an unauthorized attempt to remove or destroy work.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal
----- b. Which results in possible or actual minimum damage to aircraft or other property and minor disruption of mission.	Reprimand	Reprimand to 5-Day Suspension	Reprimand to Removal
----- c. Which results in possible or actual major damage to aircraft or other property or possible or actual danger to personnel.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal
25a. Off duty misconduct of such major import that the employee is unable to fulfill his or her job responsibilities. NOTE: Before initiating action, carefully review attachment 5, paragraph 9 to ensure that the criteria are understood and met.	Reprimand to Removal	Reprimand to Removal	Reprimand to Removal
25b. Off duty misconduct of such significance that there is an adverse effect upon the Air Force. NOTE: Removal is normally warranted when US citizens employed overseas become culpably involved with the law enforcement authorities of a host government in whose country the USAF facility is a guest. Such involvement reflects upon the United States and affects the success of its mission overseas.	Reprimand to Removal	Reprimand to Removal	Reprimand to Removal
26. Aiding and assisting in prosecution of claim against the United States, or receiving any gratuity or any share of or interest in claim from any claimant other than in discharge of proper official duties.	Reprimand to Removal	14-Day Suspension to Removal	Removal

	First Offense	Second Offense	Third Offense
27a. Compromise or discredit of examination materials or process resulting from discussion of specific question(s) or content of examination with other employee(s) based on experience in the examination when there is no deliberate effort or intent to compromise the examination materials or process.	Reprimand	Reprimand to 14-Day Suspension	5-Day Suspension to Removal
27b. Compromise of an examination through unauthorized possession, use, or furnishing to others of examination information or materials.	Reprimand to Removal	14-Day Suspension to Removal	Removal
28a. Committing a prohibited personnel practice (see 5 U.S.C. 2302).	Reprimand to 5-Day Suspension	Reprimand to 14-Day Suspension	Reprimand to Removal
28b. If violation was deliberate. NOTE: If a supervisor or manager has engaged in an activity which adversely reflects upon the integrity of the management process, a decision should be made as to whether he or she should be reassigned or changed to lower grade to a position of a different character.	Reprimand to Removal	Removal	
29a. Discrimination based on race, color, religion, sex, national origin, age, or handicapping condition. Includes sexual harassment. Also includes making racial or ethnic slurs, or disseminating literature containing such slurs. Consider circumstances and the effect on the person(s) discriminated against, use of abusive language, violent treatment, or insulting demeanor.	Reprimand to 5-Day Suspension	Reprimand to 14-Day Suspension	10-Day Suspension to Removal
29b. If the discrimination was deliberate. NOTE: If a supervisor or manager has engaged in an act of discrimination, a decision should be made as to whether he or she should be reassigned or changed to lower grade to a position of a different character.	Reprimand to Removal	Removal	
30a. Use of abusive or offensive language toward a subordinate; baiting or otherwise inciting a subordinate to violate rules or regulations; coercion in deprivation of an employee's rights; or reprisal for employment of appellate procedures.	Reprimand to 5-Day Suspension	Reprimand to 14-Day Suspension	10-Day Suspension to Removal
30b. If violation was deliberate. NOTE: If a supervisor or manager has engaged in an activity which adversely reflects upon the integrity of the management process, a decision should be made as to whether he or she should be reassigned or changed to lower grade to a position of a different character.	Reprimand to Removal	Removal	

### SELECTING THE PENALTY

Use this attachment along with attachment 3. It shows the interrelationships of some key factors in the disciplinary system but neither establishes additional procedural requirements nor automatically sets penalties. Other factors may also be weighed.

Information on how basic penalty<sup>1</sup> was derived and on how favorable elements<sup>2</sup> were considered need not be included in notices but must be available for subsequent use.<sup>3</sup>

Information must be included in the notices of any consideration used to increase the severity of the basic penalty.<sup>4</sup>

<p>1. Basic penalty is the one that would be used if there were no other considerations. It is based on:</p> <p>a. <i>Offense:</i></p> <p>(1) Character.</p> <p>(2) Seriousness.</p> <p>(3) Consequences.</p> <p>b. <i>Rehabilitative potential of penalty.</i></p> <p>c. <i>Character of employee's position.</i></p>	<p>2. Favorable elements are those considerations which tend toward the imposition of less severe penalties. Included are:</p> <p>a. <i>Situation.</i></p> <p>(1) Possibility of genuine misunderstanding.</p> <p>(2) Enticements or provocations.</p> <p>(3) Mitigating circumstances.</p> <p>b. <i>Employee:</i></p> <p>(1) Length of service.</p> <p>(2) Quality of work history.</p> <p>(3) Personal reputation.</p> <p>(4) Past contributions.</p> <p>(5) Record of cooperativeness.</p> <p>(6) Record of achievements.</p>	<p>3. Unfavorable elements are considerations which tend to show a need for more severe action than is usually taken. Included are:</p> <p>a. <i>Penalties for past offenses within:</i></p> <p>(1) Suspension—3 years.</p> <p>(2) Reprimand—2 years. See paragraph 14a(1).</p> <p>(3) Admonishment—2 years.<sup>5</sup> See paragraph 13a(2).</p> <p>b. <i>Combination of offenses.</i></p> <p>c. <i>Series of offenses.</i></p> <p>d. <i>Character of other offenses.</i></p> <p>e. <i>Recency of other offenses.</i></p> <p>f. <i>Employee willfulness.</i></p>	<p>4. Penalty assessed results from weighing of favorable and unfavorable factors in relationship to the offense.</p> <p>a. Proposed penalty is determined on the basis of all information available at time of institution of action, and penalty is specifically stated in notice of proposed action.</p> <p>b. Penalty decided upon is determined based on all available information including employee's answer to notice of proposed action. Give consideration to request for compassion. State penalty decided upon and effective date in notice of decision.</p>
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#### NOTES:

1. Determine by reference to Section F of this regulation and to comparable offenses in attachment 3.
2. See paragraph 34b of regulation.
3. See paragraph 12b(2) of regulation.
4. See paragraphs 36, 37, 38, and 39 of regulation.
5. An oral admonishment may be used only under limited circumstances. See paragraph 39.

## SPECIFIC DISCIPLINARY AND NONDISCIPLINARY SITUATIONS

**1. Substandard Performance of Duties.** It is important to recognize the true character of a substandard performance problem. That requires a careful evaluation of the total circumstances surrounding the substandard work to determine whether the employee is responsible for the condition and can control the essentials of the problem. Appropriate corrective action is not necessarily disciplinary. A disciplinary action is appropriate when the cause(s) of the substandard performance are within the employee's control and when it is expected that disciplinary action can motivate a change in behavior to correct the substandard performance. Other situations may result in personnel actions, including adverse actions, but such actions should be identifiable as nondisciplinary.

a. If the cause of the unacceptable work is personal to the employee but is not in the employee's control, the situation is not disciplinary. For example, unacceptable performance caused by the employee's *inability* to perform no matter how hard the employee tries requires nondisciplinary treatment. An action based solely on unacceptable performance is processed under AFR 40-452, if applicable.

b. If the employee has the skills, knowledge, and capacity to perform well, and fails to do so, the situation is probably one which calls for a disciplinary action to clearly inform the employee of management's concern and to motivate improvement through elimination of the causes of the substandard performance. Characteristic of these disciplinary situations are carelessness, negligence, refusal to perform, performance in a dilatory manner, loafing, or disregard for policy or procedure. An action which has a disciplinary component is processed under this document, as applicable.

**2. Medical Incapacity.** An adverse action taken because an employee fails to meet medical standards for retention in the employee's position is nondisciplinary. Management has the authority and responsibility to make sure that employees meet medical standards, and employees are obligated to cooperate. Therefore, an employee can be disciplined (including removal) for refusal to take a mandatory medical examination.

**3. Functional Transfer.** While failure to accompany a position in a functional transfer is both personal to the employee and within the employee's control, adverse actions in such cases are nondisciplinary.

**4. Failure To Apply For and Accept Return Assignment According To Oversea Employment Agreement.** Failure to honor an overseas employment agreement by not applying for and accepting return assignment according to the terms of the agreement is a nondisciplinary basis for separation.

**5. Preappointment Considerations.** Sometimes, after an employee is appointed, information is developed about the employee's conduct or health which raises a question as to the desirability of the employee's retention.

a. When such information was fully disclosed and reviewed by the Air Force appointing officer or by the OPM before the employee's appointment, disciplinary action is not appropriate solely on the basis of such previously disclosed preappointment information.

b. If the information was not known or disclosed before appointment, disciplinary action may be taken for such cause as will promote the efficiency of the service. Generally, an employee who is serving under other than a temporary appointment may not be removed unless the preappointment consideration would have been material in preventing the employee's appointment (see guidance in FPM Supplement 731-1).

### **6. Drug or Alcohol Abuse:**

a. The Department of the Air Force Drug and Alcohol Abuse Prevention and Control Program, AFR 40-792, gives nondisciplinary procedures for offering rehabilitative assistance for drug or alcohol abuse problems. Drug or alcohol abuse involves the personal use of those substances. See AFR 40-792, Drug and Alcohol Abuse Prevention and Control, for further explanations of the terms. Except as provided in b below, when the supervisor has good reason to believe that the cause of a job-related problem may be drug or alcohol abuse, the supervisor will postpone initiation of contemplated disciplinary or adverse action under this publication pending referral of the employee for interview according to AFR 40-792, attachment 3, paragraph 2f(2). The contemplated disciplinary action or adverse action will be postponed for a reasonable time to allow the employee to improve provided the employee reports for the interview; the supervisor knows that the employee is enrolled in an approved rehabilitative program; and the employee is progressing satisfactorily. (See AFR 40-792, attachment 3, paragraph 7c for an explanation of "reasonable time.") If the employee does not report for the interview, the supervisor may proceed with the contemplated disciplinary or adverse action, as applicable.

b. Adverse action need not be postponed if placement of the employee in a leave status is not appropriate and retention of the employee in a duty status might result in damage to government property or personal injury to the employee or others. Adverse action need not be postponed if the crime provision discussed in paragraph 16e(1) is invoked.

c. One referral of the employee for interview under AFR 40-792, attachment 3, paragraph 2f(2) meets the Air Force obligation to advise the employee of the availability of rehabilitative assistance. Therefore, the

employee need not be referred for interview under AFR 40-792 again before disciplinary or adverse action may be taken for misconduct, delinquency, or another job-related problem that occurs or is brought to the employee's attention after the date established for the initial interview.

d. Participation in a rehabilitative program does not exempt an employee from disciplinary or adverse action for reason(s) that occur after the initial referral for interview according to AFR 40-792, attachment 3, paragraph 2f(2), nor for reason(s) unrelated to drug or alcohol abuse.

**7. Motor Vehicle Operator.** Disciplinary and adverse actions against individuals assigned to operator and incidental operator positions must be according to applicable laws and regulations. The following grounds are among those constituting sufficient cause of action against operators and incidental operators:

a. The employee is convicted of operating under the influence of narcotics.

b. The employee is convicted of leaving the scene of an accident without making himself or herself known.

c. A federal medical officer finds the employee fails to meet the required physical standards.

d. The employee's state license is revoked.

e. The employee's state license is suspended. The employee may be continued in his or her position for not to exceed 45 days from the date of suspension of the state license, for operation on other than public highways. This is to permit continuance of an employee in a position for which a currently valid state license is required where it is probable that the employee will have his or her state license restored within the 45-day period. If it is apparent from the nature of the suspension that the state license is not likely to be restored within the 45 days, the employee should be immediately barred from the operation of a motor vehicle. Additional guidance is in FPM Chapter 930, Subchapter 1.

**8. Misuse of Leave.** Since management has the discretion to approve or deny most requests for leave, the general rule is that management may not take action based on an employee's use of *approved* leave, whether it be sick leave, annual leave, or leave without pay (see exceptions in b below). Use of accrued *sick* leave in the absence of fraud or subterfuge, is an entitlement of every employee who is ill or incapacitated by injury, and an approval is contingent on submission of supporting evidence acceptable to management. The right of the employee to take sick leave for nonemergency examinations is subject to requesting this leave in advance, with the approval of the proposed time subject to the need for the employee's services. When management approves an employee's request for leave, the approving official presumably makes a determination that the employee's presence on the job is not required. If

management needs the employee's services, it may deny leave and if the employee does not report for duty, show the absence in time and attendance reports as absence without leave (AWOL). Neither the denial of leave nor the time and attendance reporting entry of AWOL is punitive, and neither means that the employee has insufficient reason for requesting leave. Rather, they mean that the employee's presence is required and that the reason for requesting leave is not one for which leave must be approved. The employee's failure to honor the leave denial and the unauthorized absence may form the basis for disciplinary or adverse action.

a. If management has in the past approved an employee's leave but believes that the extent of the leave used is such that the employee is not on duty on a regular, full-time or part-time basis in a position which requires a regular, full-time or part-time employee, or if the employee has consistently failed to obtain advance approval for leave, management has the opportunity to establish an appropriate record as part of a basis for further action by:

(1) Informing the employee that his or her attendance record is unsatisfactory and needs to be improved.

(2) Warning the employee that further sick leave will not be approved without sufficient medical documentation and that annual leave and leave without pay (LWOP) will be approved only if requested in advance and the employee's services are not essential during the period for which the leave is requested.

NOTE: If the employee is then absent without prior approval or proper medical documentation, management may record the employee's absence as AWOL. Such unauthorized absence may serve as a basis for disciplinary or adverse action.

b. Exception to the General Rule. Adverse action may be taken based on a record of excessive unscheduled LWOP when three criteria are met:

(1) The record shows that the employee was absent for compelling reasons beyond the employee's control so that management approval or disapproval was immaterial because the employee could not be on the job.

(2) The absence or absences continued beyond a reasonable time and the employee was warned that adverse action might be initiated unless the employee became available for duty on a regular, full-time or part-time basis.

(3) Management showed that the position needed to be filled by an employee available for duty on a regular, full-time, or part-time basis.

NOTE: This exception would be applicable only under certain unusual circumstances such as the inability of an employee to return to duty or to work on a regular basis because of the continuing effects of illness or injury (on or off-the-job). Other circumstances may, in rare cases, meet these criteria. This exception would probably not



apply, for example, to situations of repeated absences to tend to personal affairs or because of failure to obtain adequate transportation to work. These situations presumably are under the control of the employee and, therefore, are reasons to deny leave and record the absence as AWOL. Separation of an employee who is receiving employee's compensation after an on-the-job injury would be handled as explained in FPM Chapter 353 and AFR 40-716, Fitness for Duty Examinations and Resulting Personnel Actions.

9. **Off-Duty Misconduct.** Because the Air Force does not interfere unnecessarily in the private affairs of its employees, care must be taken in citing an employee's off-duty misconduct as a cause of action. As in any other disciplinary or adverse action, there must be a nexus between the cause of action and the efficiency of the service.

10. **Arrest, Indictment, or Conviction for Criminal Offense:**

a. **Arrest.** The fact that an employee was arrested for a crime is not by itself sufficient as a cause of action since the employee, in fact, may be innocent of the crime. However, the underlying misconduct which led to the arrest may be the basis for disciplinary action even though no later trial is held or the employee is acquitted.

b. **Criminal Indictment.** Criminal indictment by itself is not sufficient as a cause of action, except for an indefinite suspension pending disposition of criminal action (see paragraph 16e(1) and FPM Chapter 752, Subchapter 3.)

c. **Criminal Conviction.** If the cause of action relied on for disciplinary action is criminal conviction, later acquittal of the employee or dismissal of the criminal charge could vacate the cause for management's administrative action. If the cause of action relied on is the employee's underlying act of wrongdoing rather than the conviction, the administrative action generally will not be affected by the later court action on the criminal case.